United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

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# House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. LAHOOD).

## DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
*September 25, 2002.*

I hereby appoint the Honorable RAY LAHOOD to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
*Speaker of the House of Representatives.*

## PRAYER

Rabbi Melvyn May, West End Temple Sinai Congregation, Neponsit, New York, offered the following prayer:

Our God and God of our fathers, as this session of the House of Representatives begins, we pray that the spirit that permeates this room today will enhance and enrich the endeavors of our Congressmen and Congresswomen on behalf of all the citizens of our great country, the United States of America.

In the words of the Psalmist: How good and pleasant it is for brethren to dwell together. During this period when Jews throughout the world celebrate the High Holy Days and the spirit of renewal, we seek to understand and to do God's will so that all humankind will be free. As a Nation under God, we affirm the obligation of our elected officials to lead this country in the spirit of brotherhood, justice and righteousness that was taught by the prophets.

Almighty God, bestow Your continued blessings upon all of our elected officials and their staffs, for good health, happiness, knowledge and strength.

Implant in the hearts of the Members of Congress a sincere desire to toil together for the aims and goals of our American heritage, as exemplified in the spirit of the Constitution. We pray that unity of purpose and harmony of spirit will forever prevail.

With God's divine guidance may their best ideals come to fruition. Amen.

## THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. MCNULTY. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCNULTY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

## PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Texas (Mr. LAMPSON) come forward and lead the House in the Pledge of Allegiance.

Mr. LAMPSON led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces that there will be ten 1-minutes on each side.

## WELCOMING RABBI MELVYN MAY, WEST END TEMPLE SINAI CONGREGATION, NEPONSIT, NEW YORK

(Mr. WEINER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEINER. Mr. Speaker, I ask the House to join me in welcoming Rabbi Melvyn May, who gave the invocation this morning. He is the spiritual leader of the West End Temple in Neponsit, New York. His path to that post took him through Connecticut, New Jersey and Brooklyn; and in each and every place he held positions of leadership in the community. He was someone who led the campaign for better understanding among our communities.

When he arrived at Neponsit, he arrived at, frankly, a most troubled time in our community. He arrived in October, 2001, one month almost to the day after the horrific attack on the World Trade Center that took so many of our neighbors in Rockaway, and he arrived also one month before a terrible plane crash in Belle Harbor, a stone's throw from his congregation's home.

During that time, Rabbi May, with dignity and with great understanding, led our community through that most difficult time. He has, in a relatively brief time, just about a year, become a force for healing and understanding throughout our community.

At this time of the holidays in the Jewish faith, he has been someone who has also led a campaign for better understanding among our very diverse communities in New York City.

I ask my colleagues in the House to join me in welcoming Rabbi May, and



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we ask that his accomplishments be spread across the record of this great body so that they can be shared throughout the Nation.

## U.N. MUST PASS STRONG RESOLUTION ON IRAQ

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, last week we heard Iraq agree to allowing U.N. weapons inspectors back into their country without conditions. All I can say is we have been down this road before.

Mr. Speaker, the United Nations must show real backbone if they want to be a meaningful organization in the 21st century. Unfortunately, we have had a decade of defiance and deception from Iraq. Let us not forget that between 1991 and 1998, in spite of 13, yes, 13 different U.N. resolutions mandating unconditional access, Iraq never allowed that to happen.

Saddam always had conditions. Inspectors were kept from presidential palaces, mosques and military installations, just to name a few locations.

The U.N. must pass a resolution that not only mandates unconditional weapons inspections, but also outlines the serious consequences for Saddam if Iraq fails to act and fails to allow U.N. inspectors to do their complete and unfettered job. The U.N. must take control and mandate unfettered inspections, and Saddam Hussein must comply. It is time for the U.N. and not Saddam Hussein to be in the driver's seat.

## SUPPORT SECRET SERVICE CHILD PROTECTION ACT

(Mr. LAMPSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMPSON. Mr. Speaker, I stand here today to tell you that the Secret Service does not just protect the President, they also protect missing kids. Nearly a decade ago, Congress authorized the U.S. Secret Service to participate in a multi-agency task force with the purpose of providing resources, expertise and other assistance to local law enforcement agencies and the National Center for Missing and Exploited Children in cases involving missing and exploited children.

This began a strong partnership between the Secret Service and the National Center for Missing and Exploited Children and resulted in the Secret Service providing critical forensic support, including polygraph examinations, handwriting examinations, fingerprint research and identification, age progressions and regressions and audio and video enhancements to the National Center and the law enforcement in numerous missing children's cases.

However, there is a clear need to provide explicit statutory jurisdiction to the Secret Service to continue this forensic and investigative support upon request from local law enforcement, or NCMEC.

I urge Members to support the Secret Service and NCMEC by cosponsoring the Secret Service Child Protection Act, H.R. 5389. Help the Secret Service continue their work on behalf of America's children.

## ENSURING AMERICA'S NATIONAL AND ECONOMIC SECURITY

(Mr. BARTLETT of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Speaker, America and the world must overcome the threat posed by Saddam Hussein's continuing effort to control or disrupt supplies of Arab oil. Successful completion of the House-Senate conference on a national energy bill is imperative to ensure America's national security and economic security.

Americans are 5 percent of the world's population, we use 25 percent of the world's oil production, and we produce 30 percent of the world's goods and services. We are the most energy-efficient and productive nation on Earth. However, America has only 2 percent of the world's known reserves of oil. America imports almost 60 percent of our oil, up from 32 percent in 1992 and 34 percent during the last Arab oil embargo. In 2002, Americans have already paid Saddam Hussein $2.3 billion for oil we need to run our economy and our military.

Since 1970, oil production in the United States has declined, with only a tiny blip up from Alaska's Prudhoe Bay. Many experts agree that U.S. oil production will continue to decline, no matter what we do in terms of drilling.

A comprehensive energy bill with advances in conservation, efficiency and alternative and renewable forms of energy will strengthen America's economy and national security and lessen our dependence upon oil from Saddam Hussein.

## HONORING JOSEF D'HEYGERS FOR HIS CONTRIBUTIONS TO MATER DEI HIGH SCHOOL

(Ms. SANCHEZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SANCHEZ. Mr. Speaker, today I rise to honor Josef D'Heygers for his contributions to Mater Dei High School in Santa Ana and to our community.

Josef worked as a caretaker for Mater Dei High School for over 40 years, beginning in 1956. He has lived a modest life, living on campus in a trailer filled with crosses and Mater Dei memorabilia.

Josef recently donated his life savings to Mater Dei to assist with the school's plans to expand. His was one of the top donations given to the campaign.

Mater Dei has always been Josef's family. He gave generously because he firmly believes that education keeps teenagers happy and out of trouble, and he wants his gift to offer students what they need for college and for a lifetime of success.

Josef was recently honored by Mater Dei by having the new counseling and classroom building named after him.

I think all of us can learn from Josef's generosity and his dedication to the education of our Nation's children.

## SUPPORT BALANCED ENERGY PLAN TO SECURE TERRORIST-FREE FUTURE FOR AMERICA

(Mr. REHBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REHBERG. Mr. Speaker, America is already at war. We are at war against terrorists and those that support evil.

Today we have an important decision to make: Will we continue to finance Saddam Hussein's war machine by buying his oil, or will we support energy independence? I stand here today in support of America and for using America's untapped energy resources.

While our sons and daughters bravely fight terrorism, there are those in this Chamber that would have America continue to import almost 60 percent of our oil from terrorist-sponsoring regimes.

I urge my colleagues to support a balanced energy plan to secure a terrorist-free America for our future.

## RESERVATIONS CONCERNING PROPOSED ATTACK ON IRAQ

(Mr. WU asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WU. Mr. Speaker, I rise today to express my grave reservations concerning this administration's proposed attack on Iraq. If there were evidence of an imminent threat against us or an attack on Iraq's neighbors, I would not hesitate to use force. But every successful American wartime President, Lincoln, Wilson, Roosevelt, Kennedy, presented evidence to the Nation and to the world that war was absolutely necessary, and thereby led a united Nation in purpose and in moral certitude.

Mr. Speaker, I want to quote a President who avoided becoming a wartime President. In averting a war with France almost 2 centuries ago, John Adams wrote to his wife, Abigail: ''Great is the guilt of an unnecessary war.''

If there is evidence of imminent necessity, I ask the administration to present it now. We owe it to ourselves, to the world, and to posterity.

## GETTING THE AMERICAN ECONOMY ON TRACK

(Mr. PETRI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PETRI. Mr. Speaker, today I am introducing legislation to help get our economy going again, to get people investing again and to strengthen America's retirement.

My bill will help to boost stock market performance by providing a real incentive for investors to keep their hard-earned money in the market. This bill will achieve that goal by ending the double taxation of dividends.

Currently dividend income is taxed twice, first as corporate income and again as personal income. This tax policy diminishes the value to shareholders of dividend-paying stocks.

By treating dividend payments differently from interest, we are providing a disincentive for corporations to return earnings to shareholders. Not surprisingly, dividend payments have declined in recent years.

Encouraging the regular payment of dividends by ending their double taxation will attract new investors and help to stop the slide of the stock market.

□ 1015

## TIME TO END INTEREST-FREE LOANS TO THE GOVERNMENT

(Mr. SAM JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, I am here today to call for an end to huge interest-free loans to the government. That is why I have a plan that would fix a portion of the alternative minimum tax problem for those who purchased incentive stock options from their employer. H.R. 5398 would allow taxpayers to apply their prepaid ISO taxes under AMT against up to half of their regular income tax liability.

Mr. Speaker, many taxpayers have prepaid thousands of dollars of taxes with little ability to use those accumulated credits. In essence, people are floating the government a huge interest-free loan. It is just plain wrong, and it must stop.

My bill fixes that so families who have put second mortgages on their homes, cashed out retirement savings, sold assets, and struggled to work out payment plans with the IRS can get their money back and get on with their lives. It is the least we can do for America.

## TIME TO PASS PENSION PROTECTION LEGISLATION

(Mr. BOOZMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOOZMAN. Mr. Speaker, it has been over 5 months since we passed H.R. 3762, the Pension Reform Security Act. This issue is still a concern to the third district of Arkansas, yet Congress has not completed work on the legislation that will protect my constituents' pensions.

The bill we passed back in April evens out the playing field between senior level executives and the men and women of their workforce. This bill relaxes diversification rules for rank and file workers, enhances worker access to quality investment, and provides a number of much-needed retirement security reforms.

Mr. Speaker, pension reform and protection are critical to restoring investor confidence in our faltering marketplace, and the completion of this bill is critical to the agenda of the 107th Congress. I encourage my colleagues in the House to reaffirm our commitment to pension protection by voting for House Resolution 540 today.

## AMERICANS SHOULD PRAY FOR PEACE

(Mr. DOGGETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOGGETT. Mr. Speaker, tonight at 6 o'clock at Freedom Plaza at 13th and Pennsylvania, a number of area religious leaders will gather in a prayer vigil for peace. This afternoon, several of the victims from 9/11 will be here to affirm that they think peace is the better course, particularly since there has been a total inability of the Administration to connect the terrorist events of 9/11 with Iraq.

I believe that Americans must pray and must petition their elected representatives here in the Congress to be more than a speed bump on the fast track to war in Iraq, a war that will take thousands of lives, a war that will take hundreds of billions of dollars from American taxpayers.

Now is the time to speak out and speak out firmly in favor of the security of our country and our families, and doing it in a constructive and reasonable way, not by launching a war against a despot in Iraq.

## HAPPY 75TH BIRTHDAY TO HENRY HILL

(Mr. ISAKSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ISAKSON. Mr. Speaker, I rise today to acknowledge and celebrate the 75th birthday of Dr. Henry Hill of Cobb County, Georgia. Henry is my friend and my mentor and, most importantly, he was my first successful campaign manager. But I do not rise for myself, I rise for thousands of parents, thousands of children, thousands of teachers.

Henry's life has been dedicated to public education as a principal, as a coach, as a teacher, and as a counselor. Normally on birthdays we give the recipient a gift, but on this birthday, number 75 for Henry, I acknowledge the gift he has given to thousands and thousands of our children.

May God Bless Henry Hill.

## PROTECTING AMERICA AGAINST TERRORISTS, THUGS, BULLIES, AND MURDERERS

(Mr. HAYES asked and was given permission to address the House for 1 minute.

Mr. HAYES. Mr. Speaker, I rise today in response and in direct opposition to statements that have been recently made. Everyone in this House wants peace; the question is how. Those who say that we and the President have not connected the dots either cannot read or refuse to assess the information that is readily available in both secret and public briefings. We can look to the former weapons inspectors, we can look to the research data behind Prime Minister Blair's speech, and we can look at the research backing up the President of the United States' speech to the U.N.

Mr. Speaker, the evidence is clear. We will protect America against terrorists, against thugs, bullies, and murderers like Saddam Hussein. In visiting Fort Bragg, our soldiers, sailors, airmen, and Marines are ready to do what it takes to protect America and the civilized world.

## STAND UP FOR AMERICA'S PENSIONERS

(Mr. TIERNEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIERNEY. Mr. Speaker, I thought we might take a minute this morning to talk about the fact that while our economy struggles and while families across America watch helplessly as their retirement savings dwindle away as a result of corporate greed and mismanagement, while health care costs soar to ever-higher rates, and while prescription drug prices rise at 5 times the rate of inflation, the leadership in this House can still be counted on to protect the interests of corporate moguls and wealthy special interests at the expense of hard-working American families.

A case in point. With the startling news that 401(k) and other defined contribution plans lost $210 billion last year, and IRAs lost $230 billion, the majority in this House still thinks it perfectly all right for companies to provide conflicted investment advice to their employees, advice from analysts who have a stake in the very stocks that they are touting, analysts who receive financial benefits from promoting certain stocks, even if they know they are of questionable value.

Some of us tried to do something about that and correct the inequity

when we considered the so-called pension reform bill last spring. My amendment would have provided truly unconflicted advice to investors, and that is the direction we ought to go. The bills that are in front of the House later on today, Mr. Speaker, do not move in that direction, and we need to stand up for the American people whose investments are dwindling and do the right thing.

## AMERICA'S INTERESTS SHOULD BE FIRST ON THE FLOOR OF THE HOUSE

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, now, let us just kind of go back in time. Suppose it is August 2001, and a Member of Congress is speaking to a Rotary Club or something and says, listen, there is a guy out there, a known terrorist named Osama bin Laden. He has a group called al-Qaeda, and they have found sanctuary and training opportunities inside the corrupt Taliban government of Afghanistan. Now, I am telling you here and now, in August 2001, ladies and gentlemen, we need to instruct the President of the United States and instruct the CIA to take him out. We need to work with maybe an international coalition to get rid of this guy.

Now, if a Member of Congress had been saying that 13 months ago, he would have been laughed at, he would have been ridiculed, and he would have been called a warmonger and, yet, how right that statement would have been 13 months ago.

Now, are we not in the same position? We have Saddam Hussein, he hates America, he harbors terrorists, he has been directly and indirectly involved with all kinds of terrorist activity, many against America, all around the globe. Is it not prudent to take the course of action that our President is doing?

Mr. Speaker, this is not time for partisanship or cowering behind whatever boundaries or ideas that one has; this is time to put our best thoughts together and work together as a Nation, as Democrats and Republicans, and bring America's interest first to the floor of this House and get behind the President of the United States.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 8 of rule XX, the Chair will now put the question on the approval of the Journal and then on each motion to suspend the rules on which further proceedings were postponed on Tuesday, September 24, in the order in which that motion was entertained.

Votes will be taken in the following order:

on approving the Journal, de novo;

on H.R. 2982, by the yeas and nays;

and on H. Con. Res. 297, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

## THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the question de novo of the Speaker's approval of the Journal.

The question is on the Speaker's approval of the Journal of the last day's proceedings.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCNULTY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

This will be a 15-minute vote followed by two 5-minute votes.

The vote was taken by electronic device, and there were—yeas 366, nays 48, answered ''present'' 1, not voting 17, as follows:

[Roll No. 407]

YEAS—366

Abercrombie
Ackerman
Akin
Allen
Andrews
Armey
Baca
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clayton
Clement
Clyburn
Coble
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Engel
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Manzullo
Markey
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Obey
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sanders
Sandlin
Sawyer
Saxton
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Sullivan
Sununu
Tanner
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wynn
Young (FL)

NAYS—48

Aderholt
Baird
Baldwin
Borski
Capuano
Crane
DeFazio
English
Filner
Fossella
Gutknecht
Hastings (FL)
Hilliard
Hinchey
Holt
Hulshof
Johnson, E. B.
Jones (OH)
Kennedy (MN)
Larsen (WA)
Latham
LoBiondo
McDermott
Miller, George
Moore
Oberstar
Olver
Pallone
Peterson (MN)
Phelps
Ramstad
Sabo
Sanchez
Schaffer
Schakowsky
Strickland
Stupak
Sweeney
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Udall (CO)
Udall (NM)
Waters
Weller
Wicker
Wu

ANSWERED ''PRESENT''—1

Tancredo

NOT VOTING—17

Callahan
Clay
Ehrlich
Maloney (NY)
Mascara
Matsui
McKinney
Meek (FL)
Mink
Mollohan
Paul

Roukema
Stump
Thurman
Towns
Whitfield
Young (AK)

□ 1049

So the Journal was approved.

The result of the vote was announced as above recorded.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 8 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting on each additional motion to suspend the rules on which the Chair has postponed further proceedings.

## VICTIMS OF TERRORIST ATTACKS MEMORIAL ACT

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 2982, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah (Mr. HANSEN) that the House suspend the rules and pass the bill, H.R. 2982, as amended, on which the yeas and nays are ordered.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 418, nays 0, not voting 14, as follows:

[Roll No. 408]

YEAS—418

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clayton
Clement
Clyburn
Coble
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Manzullo
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Tiahrt
Tiberi
Tierney
Toomey
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOT VOTING—14

Callahan
Clay
Hunter
Maloney (NY)
Mascara
Meek (FL)
Mink
Mollohan
Paul
Roukema
Stump
Thurman
Towns
Young (AK)

□ 1059

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: ''A bill to authorize the establishment of a memorial to victims who died as a result of terrorist acts against the United States or its people, at home or abroad.''.

A motion to reconsider was laid on the table.

## RECOGNIZING HISTORICAL SIGNIFICANCE OF 100 YEARS OF KOREAN IMMIGRATION TO THE UNITED STATES

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 297.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. TOM DAVIS) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 297, on which the yeas and nays are ordered.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 417, nays 0, not voting 15, as follows:

[Roll No. 409]

YEAS—417

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clayton
Clement
Clyburn
Coble
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham

Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Manzullo
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Tiahrt
Tiberi
Tierney
Toomey
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOT VOTING—15

Callahan
Clay
Hunter
Maloney (NY)
Mascara
Meek (FL)
Mink
Mollohan
Paul
Roukema
Stump
Thurman
Towns
Watkins (OK)
Young (AK)

□ 1108

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## ABORTION NON-DISCRIMINATION ACT OF 2002

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 546 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 546

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4691) to prohibit certain abortion-related discrimination in governmental activities. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; and (2) one motion to recommit.

The SPEAKER pro tempore (Mr. LAHOOD). The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER) pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

On Tuesday, the Committee on Rules met and granted a closed rule for the Abortion Non-Discrimination Act of 2002. H.R. 4691 strengthens existing law by saying that health care entities should not be forced by the government to provide abortions. It is a very small but very important step in the right direction. It simply protects conscience rights of those organizations who do not want to be involved in abortion.

I urge Members to act promptly to enact the Abortion Non-Discrimination Act, which will address the crisis of conscience rights and begin to eliminate the intolerance, coercion and discrimination against health care participants who do not believe in participating in abortion procedures due to moral or religious beliefs.

In 1996 Congress passed a law that forbids government discrimination against health care entities that refuse to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions or to provide referrals for such training for such abortions.

However, due to recent judicial misrepresentation, H.R. 4691 is needed to clarify that health care entities include all health care organizations, including hospitals. It is a simple, commonsense and technical change.

I am pleased that in my home State of North Carolina a physician or a nurse does not have to perform abortion if it is against their religious principles. The same applies for hospitals and health care institutions. In fact, 44 other States have similar conscience clauses. So this is not something new and different.

As a cosponsor of this legislation, I am very pleased to see it reach the floor of the House.

I also believe that today a growing number of health care practices, procedures and medications present serious moral concerns for many health care providers. Recent medical and pharmacological developments increasingly put health care entities at the vortex of some of society's controversial moral dilemmas.

Increasingly, there is pressure upon health care providers, both individuals and organizations, to put aside personal moral beliefs in order to facilitate convenient access to new drugs, procedures and technologies. In the ordinary course of professional life, without any additional pressures, these dilemmas arise often enough to create crisis for tens of thousands of health care entities.

However, in addition to these dilemmas, there are increasing pressures upon health care participants to facilitate or provide products or services which violate their own conscience. Advocates of particular procedures and programs, particularly major promoters of abortion, are systematically singling out health care providers and entities to squeeze and compel them to abandon their moral values as the price to pay to remain in the profession or in the market.

Mr. Speaker, health care providers want this bill in overwhelming numbers, believing in their hearts that they too have a right to choose, a right to choose not to be involved in destroying life. To that end, I urge my colleagues to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank the gentlewoman from North Carolina (Mrs. MYRICK) for yielding me the customary 30 minutes.

Mr. Speaker, it has been a mere 6 weeks since the leadership lobbed on to the House floor a bill targeting women and their reproductive health care. Be assured that the election season is upon us, and in the face of a crumbling stock market and exploding deficits and uncertain war on terrorism at home and calls for new war in Iraq, of this we can be sure: Congress will use the floor of the House of Representatives to push propaganda restricting a

woman's ability to make her own decisions rather than deal with the overriding issues at hand.

□ 1115

Mr. Speaker, Congress does not have the right or the expertise to make these decisions for the American people. The last time Members were facing a life-or-death decision, or their constituents were facing a life-or-death situation, who would they want with them in the emergency room? Did they want their physician, their spiritual adviser, family members, or would that patient say wait until a Member of Congress gets here because Congress will have the last word on this issue? I am sure that the American public would give us a resounding no. We are basically practicing medicine without a license.

Direct mail pieces distorting the issue are already being printed and will hit the streets as soon as the vote is completed. This vote is pure politics. This measure is cynical and unconstitutional. Moreover, everyone in the Senate knows that the Senate will not touch it.

In the meantime, the real work of the Congress as mandated by the Constitution goes undone. Our most fundamental duty of funding the Nation's priority has ground to a halt. With the fiscal year ending in less than a week, the President has yet to sign a single appropriations bill. The press reports indicate that the majority leadership has under consideration a plan to simply quit work and go home and come back and try again next year, using a long-term continuing resolution to disguise that fact that the people's House has ceased to perform anything but election-year gimmicks at taxpayers' expense.

It is almost superfluous to note that this is a closed rule. For those following the deliberations of this body on controversial matters, it should come as no surprise. The majority has chosen to shut out meaningful debate. Under this closed rule, no amendment will be allowed. For a bill that impacts so fundamentally on the life of so many, this is unconscionable.

For those school children who may be visiting this Chamber today, I wanted to offer a quick history lesson. Silence was not always the case here. Free-flowing debate used to be the norm. The Chamber used to team with ideas and with voices of passion from all regions of the country. Today these voices are shut out. My colleagues, the gentlewoman from Colorado (Ms. DEGETTE), the gentleman from California (Mr. WAXMAN), and the gentleman from Pennsylvania (Mr. GREENWOOD), attempted to have an amendment made in order in the Committee on Rules to prevent the most egregious effects of the underlying bill taking effect. Their efforts were struck down almost immediately along a party-line vote. It is my hope that someday true debate will return to this Chamber and the voices of our constituents will not be silenced.

But today, Mr. Speaker, instead of debate, we will have an up-and-down vote on a bill that will radically expand existing law. This legislation would essentially allow any health care entity, including hospitals, health insurance companies, or HMOs, to exempt themselves from current Federal, State and local laws that assure women have access to reproductive services. I want to make the point here that that says that the Hyde amendment, which was passed by Congress which allows a person who has been a victim of rape or incest to have an abortion, will be overridden by this bill. It says that any law or regulation by a State or the Federal Government can be overridden.

Now, any law or regulation that covers any kind of coverage will be considered discriminatory against a health care entity that does not want to comply, for any reason at all, not merely religious, and could not be enforced. Remember, the religious exemption has been in legislation for years. That is not what we are doing today. The penalty for any State or local government which discriminates is the loss of all, all Federal financial assistance. At a time when hospitals and local governments are hanging on by a thread, such a loss of Federal funds would be devastating.

H.R. 4691 has been brought to the floor without any committee consideration and over the strong objections of the moderate Members of the majority party. Moreover, for a party that prides itself on attention to States' rights, it is ironic that this legislation will override the progress of States that have worked to ensure that women not only have access to reproductive services, but also the right to basic information.

This bill reinstates the gag rule. Many in this body may not realize it, but the Federal Government does not pay for abortion services. As I mentioned before, the Hyde amendment to the Medicaid program stipulates that Medicaid patients must have access to these procedures only in cases of rape, incest or when the pregnancy endangers a woman's life. That would be gone. This bill before us overrides even that most narrow of exceptions. Moreover, States like mine, who use their own Medicaid funds to cover abortion services beyond those narrow circumstances if they wish, and in fact, 21 States do so, this bill would preclude these States from enforcing their own laws and constitutional decisions in the area of reproductive services for low-income women.

Mr. Speaker, this bill is not limited to reproductive services themselves. Under the bill, States would be prohibited from requiring health care entities participating in the Medicaid programs to provide referrals for reproductive services. It would prohibit States from ensuring that patients have all of the information they need to make an informed choice about themselves, the gag rule again.

Moreover, this bill is a direct assault on the doctor-patient relationship. Under this legislation, the administrative hospitals or HMOs could gag the doctors who work under them from discussing basic information about abortion services with their patients. We restrict no other professionals from giving the best of their advice to people who seek it.

This law provides no guidelines for why these administrators may be gagging physicians from providing or even discussing reproductive services. It will say simply to save the HMO more money. The legislation is a gross expansion of the powers of the managed-care entities to severely limit the options available to the patients that they supposedly serve. The legislation would also undermine a State's ability to set health care licensing and certification standards. Imagine that, we would be setting certification standards and licensing for them from here as well.

In deciding whether to approve a hospital merger, for example, a State could not consider whether a newly merged hospital system would diminish a community's access to full reproductive health services. This would tie the hands of States like New Jersey that are trying to ensure that entire communities are not completely without any qualified abortion providers.

In fact, supporters of the bill have stated that this is their intent. The measure is opposed by numerous groups, including the National Council of Jewish Women, Catholics for Free Choice, the American Association of University Women, the American College of Obstetricians and Gynecologists, the Center for Reproductive Law and Policy, National Organization of Women, the National Partnership for Women and Families, People for the American Way, and the Planned Parenthood Federation of America, and certainly me.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. HAYES).

(Mr. HAYES asked and was given permission to revise and extend his remarks.)

Mr. HAYES. Mr. Speaker, today I rise in strong support of the rule and the Abortion Nondiscrimination Act. The gentlewoman from New York (Ms. SLAUGHTER) strayed a bit from the subject, and I feel the necessity to respond.

As far as the work of the House is concerned, the House is doing its work. Under article 1 section 7, clause 2, the House has passed a budget and many other important pieces of legislation. As required by law, we have done our work. The Senate has not passed a budget.

More importantly, to say that protection of human life is not significant

legislation is as sadly wrong as it possibly can be. H.R. 4691 is simply a clarification of current law. This existing nondiscrimination statute that Congress overwhelmingly approved and President Clinton signed into law in 1996 protects health care entities from being forced by the government to perform abortions. Because of judicial misinterpretation, H.R. 4691 is needed to clarify that health care entities include all health care organizations, including hospitals.

In recent years, there has been a growing nationwide effort to attack the conscience rights of Catholic and other private health care providers. Alaska courts have assumed they have the authority to force private hospitals to provide abortions as a condition for receiving Federal funds or for full participation in the health care system. It is imperative that we clarify the protections contained in current law to ensure that no hospital is forced to perform abortions against its will. I support the rule and the underlying bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. MCDERMOTT).

Mr. MCDERMOTT. Mr. Speaker, I cannot help thinking that we are moving back to the 16th century. This is the most far-reaching assault on women that I have ever seen in this House. I want to put a human face on this. In 1963, I was an intern at the Buffalo General Hospital. I dealt with two poor women who had back-alley abortions. One had eight children, one had six. They were done with coat hangers, and both those women died. I still see their faces.

At the same time that was going on in Buffalo at the place I now live, Seattle, women could go down to a travel agency, buy a ticket to Japan, have a day's shopping and an abortion, and come home. Now, that is the circumstance in 1961, 1962, 1963 in this country.

For us to be moving back in this direction, overriding Roe v. Wade, and the Hyde amendment, is simply a step back into the dark ages and it is absolutely wrong. This is not a women's issue; this is a human issue. Those 14 children in Buffalo who grew up without their mothers because their mothers could not have full reproductive services in a decent hospital in a major city in the United States are what Members are saying is all right for all of the children of this country.

Leave no children behind, my President has said. Well, this is guaranteed to leave children behind if we step back this far into the past. I urge Members to vote against this rule.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas (Mr. RYUN).

Mr. RYUN of Kansas. Mr. Speaker, I rise in support of the rule, H.R. 4691. Today we have the opportunity to support freedom of conscience for those in our health care system and who have invested their lives in caring for their fellow Americans. Forty-six States protect hospitals and health care professionals who choose not to participate in abortions; and even though there is existing law, Federal law, intended to protect individuals and entities from being forced to participate in an abortion, clarification is still needed, and that is what we are doing today.

Some hospitals and doctors are being forced to go against their conscience and provide abortion services. In spite of existing law, this coercion still exists. For example, the National Abortion and Reproductive Rights Action League has a project in Maryland that aims to require every Maryland hospital to provide abortion services.

H.R. 4691 will guarantee that hospitals, insurance companies, and health care professionals will not be forced to take part in a procedure that they deem morally wrong and disagree with.

Whether one supports a right to life or a right to abortion, participating in or paying for abortion should not be forced upon anyone. I urge Members to stand with me in supporting this rule and our constituents' freedom of conscience.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I rise today in strong opposition to H.R. 4691. It is a misguided measure that has dangerous implications for women's reproductive health and for our health care system as a whole.

Of course, elections are near, so this debate might be advanced because of a right wing, anti-choice agenda. We have heard and it has been made quite clear that their political schemes are worth sacrificing the health of American women. This bill robs women of their right to get comprehensive information about their medical and legal options, and this bill will leave health care providers at the whim of the anti-choice movement.

□ 1130

The current state of our health system is obviously weakening day by day. Our constituents are experiencing increased premiums or they are being dropped by their plans altogether, and now the right wing of this Congress is prepared to tell our constituents that their right to make an informed decision is being taken away.

Mr. Speaker, rather than putting patient access to care in further jeopardy, why are we not working to improve access to quality health care? This bill also is a slap in the face to State and local governments that have implemented policies that put a woman's health ahead of bad politics.

We cannot fall for the outrageous antics of the anti-choice community. We cannot let them twist another health care issue into a political issue. That is why I implore my colleagues, my colleagues on both sides of the aisle, vote against this extremely harmful measure and vote against this rule.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, for many individuals, opposition to abortion is not just a matter of choice but it has been a matter of conscience and faith. Many individuals so moved to oppose abortion are the health care providers who at one time under Federal law found themselves in the difficult position of objecting to the procedure but being forced to perform it. Fortunately in 1996 Congress recognized that those who choose to oppose abortions should not be forced to administer the procedure and passed legislation protecting those, as they called them, health care entities from being forced by the government to perform those abortions.

Since the passage of that law, though, those who do not want to respect the right of individuals to conscientiously object to performing this procedure and want to ignore the will of Congress have fought this provision nationwide. The attack has been successful in cases such as in Alaska where courts have decided that they can force private hospitals to provide abortions as a condition of fully participating in their health care system. The ignorance of the faith and conscientious objection of American health care professionals and organizations is unacceptable.

That is why I support this legislation. It simply clarifies language in the law so that all health care entities, including Catholic hospitals and individual health care professionals other than physicians, are covered and can freely object to performing abortions on the basis of their conscientious decision.

Opponents of the bill have argued that this legislation will block access to emergency care for poor women or that it will interfere with a State's right to enforce abortion laws. None of this is true. The bill simply protects the conscientious objection of health care providers who oppose abortion.

Mr. Speaker, this is a simple and very direct bill. It does not expand or change any rights of women. What it does is it allows for the free exercise of a conscientious objection of a health care provider.

Ms. SLAUGHTER. Mr. Speaker, I yield myself 30 seconds to respond to the previous speaker. It does indeed change women's rights. It puts a gag rule on women, and the religious exemption that she talks about clarifying is already in legislation. What this does is drive women back to back alleys.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise today in strong opposition to H.R. 4691 and in opposition to the rule that we are considering

right now because we should not be considering this legislation at all. Despite the wishes of the bill's promoters, our United States Constitution does in fact guarantee American women the right to choose an abortion. And while this bill does not directly overturn Roe v. Wade, it might as well for many women do that since it will make access to abortion impossible for them. To talk about this as a technical change is simply cynical. This is one of the most dangerous attempts to restrict a woman's right to choose, including her right to information and services regarding her reproductive health.

H.R. 4691 would allow an HMO or a health insurance company to decide for any reason whatsoever that it will no longer pay for, provide information or even make referrals for abortion services even if the woman's life is endangered or she is a victim of rape or incest. Under this bill, it would be impossible for a State to ensure that women who are victims of rape or incest or whose life is threatened would have access to abortions. In this world today, there are decreasing options for everyone in choosing health insurance companies or HMOs.

So are we going to leave it, then, to an employer to decide whether or not a woman would have a right to choose in essence because that HMO would deny them access to the abortion? And in rural areas where there may be only one option for a woman to go, she is denied that opportunity to have her full health services available to her.

What this bill really does is allow any health care entity to ignore all Federal, State and local laws pertaining to abortion services, information and referrals. It is not a conscience clause as some would like to call it, as if HMOs have a conscience. In fact, there are no Federal laws that currently exist that require any individuals or hospitals to provide abortions. But this bill would restrict a doctor's rights; that is, his right if he believes in his medical judgment or in his conscience that it is his responsibility to provide those services, he could not do that. So this does limit the right of doctors not to be forced to perform it but to be forced not to perform abortions.

Women in this country need to be able to trust that when they go to a doctor with a problem or a condition that they will be given all information necessary to make informed decisions. But this bill would gag doctors. Informed consent as a minimum is a valued and expected component of our health care system. So why do we think that when it comes to women's health it is okay to throw even this concept out the window?

This is unacceptable. I urge a ''no'' vote.

Mrs. MYRICK. Mr. Speaker, I am pleased to yield 1½ minutes to the gentleman from Missouri (Mr. AKIN).

Mr. AKIN. Mr. Speaker, I think those of us that have served in public office at all know that when you come to the abortion question, there are two very highly charged and two different views on this subject. Some people think that abortion should be legal and that it is a matter of a human right and somebody's choice. Other people think that abortion is wrong and it is a form of murder. There are people in our country and in each of our districts that hold both of these views with a great deal of tenacity.

But the question before us today is really not the question of abortion. We are not going to address this underlying issue. What we are talking about instead, the question is as to whether we protect various health care organizations or individuals, whether we want to protect their right to have a choice, to even have an opinion on the subject.

What is going on here is that the abortion agenda is not really content with choice. The only choice that they are content with is that everybody has to agree with them and that we are going to compel someone else to that choice. It is always understood, I think, by most reasonable people that one person's rights stop where another person's rights start. But that is not the case here. Instead, the right of some health care organization to have an opinion on this subject is going to be hammered by the big fist of government. That is not reasonable.

All we are saying is that the person that has to provide the service needs to have a choice as well. One person's right stops where another's right starts.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume. I want to say, there is already conscience exemptions and everybody knows that. That is not why we are here today. We are really here today to turn back the clock. Without any doubt, a woman who has the opportunity even to understand what her rights are and what her options are, this is an appalling thing that we are doing. This is not an ordinary law we are talking about here. This is life and death. A woman who has come into a hospital raped, scared to death, does not know what to do, needs somebody to talk to, may have the unlucky option of coming across a doctor who says his conscience forbids him from discussing it with her, comforting her or giving her any idea that she has options.

But since this House is all politics all the time in this Chamber, I want to give you some statistics that I think might be interesting on a political issue. The vast majority of Americans oppose allowing institutional health care providers to deny service on the basis of moral or religious objections. Seventy-six percent of the public opposes giving hospitals an exemption allowing them to refuse to provide medical services to which they object on religious grounds. Eighty-nine percent of the public opposes allowing insurance companies to refuse to pay for medical services to which the insurance company objects on religious grounds. Seventy-nine percent of the public finds convincing the statement that religiously affiliated hospitals should not be allowed to force their religious beliefs on other people. And frankly, I expect that nigh 100 percent of the people in the United States do not believe that Congress should impose its religious beliefs on them.

Mr. Speaker, I include the following material for the RECORD:

AMERICAN CIVIL LIBERTIES UNION,
WASHINGTON NATIONAL OFFICE,
*Washington, DC, September 24, 2002.*

DEAR REPRESENTATIVE: The ACLU urges you to vote against H.R. 4961, the so-called ''Abortion Non-Discrimination Act'' when it is considered on the House floor tomorrow. Drafted by the U.S. Conference of Catholic Bishops and sponsored by Representatives DICK ARMEY (R-TX), JOSEPH PITTS (R-PA), and MICHAEL BILIRAKIS (R–FL), H.R. 4691 would allow a broad range of health care entities to refuse to comply with a wide array of federal, state, and local requirements to provide abortion services or information about those services.

Refusal clauses such as H.R. 4691 permit a person or entity to refuse to provide reproductive health services. The ACLU believes that such clauses should be tested against two factors: (1) the extent to which the clause protects religious refusals that place burdens on people who do not share the beliefs that motivate the refusal (by ''burdens,'' we mean obstacles to health care and other critical personal interests, but not the mere exposure of third parties to religious practices or the tax or other financial burdens that may result from permitting certain exemptions); and (2) the extent to which the clause protects institutions engaged primarily in religious worship or instruction, or instead exempts institutions engaged in a secular pursuit in the public sphere. Although this test is not compelled by an legal ruling, the ACLU believes that it strikes the appropriate balance between reproductive rights and religious freedom. H.R. 4691 fails this test because its burdens would fall primarily on those who do not share the beliefs that motivate the refusal and because it protects institutions engaged in the public and secular provision of health care. Because H.R. 4691 amounts to a broad noncompliance permit for religious entities that employ and serve people of all faiths, that perform a variety of public functions, and that accept public financial support, the ACLU strongly opposes this bill.

H.R. 4691 radically alters existing law by providing broad license for all manner of health care entities—from hospitals to insurance companies to HOMs—to avoid basic legal requirements imposed by all levels of government. The bill prohibits a governmental entity from ''discriminating''—that is, treating a health care entity differently—on the basis of the entity's refusal to perform, refer, train, cover, or pay for abortions. But merely enforcing federal, state, and local laws designed to ensure access to abortion services, or to information about those services, could constitute ''discrimination'' against entities that object to those laws. This bill could thus deny women access to critical information about their health care options, interfere with the delivery of abortion services to poor women in medical emergencies, and impede states' ability to enforce their own laws on abortion.

H.R. 4961:

Would compromise the ability of Title X clients to obtain information critical to their health. Title X, which provides federal funds for contraceptive services for low-income individuals, requires that grantees provide a referral to a qualified abortion provider upon request as part of non-directive options counseling. H.R. 4691 would prohibit the federal government from enforcing this regulation because it could be deemed ''discriminatory'' to deny Title X grants to providers that refuse to make abortion referrals. The bill could thus undermine federal standards and compromise the health of low-income pregnant women by denying them critical information;

Would interfere with the delivery of abortion services to poor women in dire emergencies. H.R. 4691 would impede compliance with the Hyde Amendment, which mandates Medicaid coverage of abortions in cases of rape, incest, or where the pregnancy endangers a woman's life. Requiring Medicaid managed care organizations to provide such coverage, or to provide information concerning such coverage, could constitute ''discrimination'' against those entities that refuse to provide or refer patients elsewhere for these services;

Would interfere with states' ability to enforce their own laws on abortion. H.R. 4691 could prevent those states that cover medically necessary abortions beyond those mandated by the Hyde Amendment (whether as a result of state constitutional rulings or by virtue of state laws) from effectuating that coverage by contracting only with Medicaid managed care organizations that agree to provide or refer patients elsewhere for abortion services. (More than fifteen states require such coverage.) The provision would interfere with these states' ability to enforce their own laws and to manage and ensure delivery of mandated services within their own Medicaid programs;

Would disrupt the enforcement of state health care regulations. H.R. 4691 would thwart the enforcement of state and local laws that require entities certified or licensed by the state to address the full range of health care needs in the communities they serve. A state might be prevented, for example, from denying a ''certificate of need'' (a state-issued document that is similar to a permit) to a newly merged hospital that refused to provide even lifesaving abortions and thus left pregnant women in the community without help in medical emergencies. (Mergers between religiously affiliated hosiptals and secular hospitals often raise this issue because some religious hospitals insist that the newly merged entity apply religious doctrine in the provision of health services.);

Could violate basic principles of federalism. H.R. 4691 might interfere with the enforcement of rulings by those state courts that have concluded that their state constitutions require broader protection for reproductive freedom than the federal Constitution provides. For example, proponents claim that the bill would overrule Valley Hospital v. Mat-su Coalition for Choice, 948 P.2d 963 (Alaska 1997), in which the Alaska Supreme Court concluded that the Alaska Constitution requires that quasi-public hospitals provide abortion services. If interpreted as its proponents urge, this bill would abrogate this state constitutional decision because it would prohibit ''discrimination'' against quasi-public entities for their refusal to provide or refer for abortions. It would thus strip states of autonomy and violate basic principles of federalism;

Could interfere with the enforcement of certain state trust laws. Some state laws prevent health facilities established as charitable trusts from making significant changes in their charitable purposes. For example, charitable trust laws may prohibit a hospital founded specifically to serve a broad segment of the community from eliminating the provision of reproductive health services. At least one state has enforced its charitable trust law against a hospital that sought to convert from a community facility to a religiously controlled facility that provided more limited reproductive health services. Proponents of H.R. 4691 argue that such a state would be deemed to have impermissibly ''discriminated'' against the hospital under the bill; and

Could immunize a health care entity's refusal to provide emergency contraception, even to victims of rape. Because it does not define the term ''abortion,'' H.R. 4691 could permit health care entities to refuse to provide emergency contraception (''EC''), even to victims of rape. Although EC is merely a high dose of ordinary birth control pills and does not interrupt an established pregnancy, some religiously affiliated providers define EC as an ''abortifacient.'' They could use this bill to attempt to shield themselves from repercussions for refusing to comply with state laws that require hospitals to provide EC (or referrals for EC) to rape survivors in their emergency rooms.

Where the Public Stands: The vast majority of Americans oppose allowing institutional health care providers to deny services on the basis of moral or religious objections:

76% of the public opposes giving hospitals an exemption allowing them to refuse to provide medical services to which they object on religious grounds.

89% of the public opposes allowing insurance companies to refuse to pay for medical services to which the insurance company objects on religious grounds.

79% of the public finds convincing the statement that ''[r]eligiously affiliated hospitals should not be allowed to force their religious beliefs on other people.''

For all of these reasons, the ACLU urges you to oppose H.R. 4691.

Sincerely,

LAURA W. MURPHY,
*Director.*
GREGORY T. NOJEIM,
*Associate Director and Chief Legislative Counsel.*

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I am pleased to yield 3 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I know this is a difficult issue for everybody and I regret to have to rise in strong opposition to this rule and to encourage the Republicans and Democrats, pro-life and pro-choice, to oppose this rule.

I do not know how many of you know women in America who use prescription contraceptives to plan their families, to manage their reproductive capability, but in my experience of the women who are of childbearing age, 99 percent, 95 percent, a very large percent of women in America use prescription contraceptives and many States require that any health plan offering prescription drugs include prescription contraceptives in order to be a non-discriminatory prescription drug plan.

This bill for the first time explicitly says that any HMO CEO, who personally defines prescription contraceptives as an abortifacient, can alter their plan to deny women the right to coverage under their prescription drug plan of prescription contraceptives.

Ladies and gentlemen, that is wrong. Never have we given, and here it is right in the bill, a provider sponsored organization, (that is a PSO), a health maintenance organization, (that is an HMO), a health insurance plan the power to deny legal benefits. Health insurance plans and the standards they must abide by are set by State law. This is a massive override of State law that regulates health insurance plans and benefits.

I have personally stood on this floor and voted against some very popular health mandates that have frankly come back to haunt me politically because the Federal Government should not be mandating health benefits on States and State plans. This is doing exactly that and it is giving this power arbitrarily to an individual HMO CEO to override State law. We have never done that. We have never stood on this House floor and allowed individuals to say in conscience, when it might well be not in conscience but in cost, the right to make such decisions in opposition to State law! Are we going to allow the conscience clause now to be polluted as an economic instrument?

The protection in conscience is clear. Forty-five States have laws protecting doctors, nurses, all health care professionals, so they do not have to provide sterilization, abortion, or any procedure that in conscience they do not agree with. Furthermore, Catholic hospitals do not have to provide facilities. No institution that in conscience does not agree has to provide services or facilities. They not only do not have to do it if there are doctors or nurses that do not agree, but the institution is protected. All this does is say CEOs are protected as well.

Did you vote for a patients' bill of rights? I do not care whether it was the Democrat's Patients' Bill of Rights or the Republican's Patients' Bill of Rights, the whole goal of that was to allow patients and doctors to make decisions about health plans and not HMO CEOs.

I urge you to vote down this rule. We need a much greater discussion than to bring this up in the waning days of a session that has not passed its appropriation bills.

Ms. SLAUGHTER. Mr. Speaker, I yield myself 1 minute.

I thank the gentlewoman from Connecticut for her very thoughtful remarks. One point she made that I think is terribly important is that we are turning religious exemption, moral thoughts and moral attitudes into an economic issue by saying we simply will not do this. But, moreover, let me make the point that we made earlier when we talked, that any hospital that flies in the face of this legislation will be restricted of all Federal aid, all of it.

□ 1145

And if the Members' hospitals are like mine, and I see no reason why they would not be, this would be devastating to them and hospitals would have to close all over the country.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, let me reiterate some of the points that have been made but most importantly the fact that we should defeat this rule. This rule is a closed rule. It did not allow a very simple amendment which would have essentially said that doctors will not be gagged from telling their patients what is the best medical information for those patients. Why on earth with an issue like this that was never even taken through committee, and I know that because I sit on the committee of jurisdiction, would we then bring a closed rule to the floor with a bill as outrageous and sweeping as this bill? I urge a ''no'' vote on the rule. And when we look at the consequences of passing the bill, even if the rule did pass, even if the doctors would be gagged, this bill is such an expansion of law that we cannot pass legislation that will hurt patients so badly.

This legislation is the biggest gag rule we have ever seen. It will not protect Catholic hospitals from providing abortions or even referrals to most people. They are already exempt under current law.

The bill would allow any hospital, any health insurance, any clinic, any HMO to deny services, coverage, or even referrals for abortions for any reason whatsoever. Proponents of this bill will say the purpose is to ensure that hospitals with religious affiliations do not provide services that conflict with their values. This is simply not true. First of all, they do not have to right now. Secondly, there is nothing in this bill about opting out of services or information due to religious values. In fact, there is nothing in this bill about religion at all. Anti-choice lawmakers are trying once again to back-door a bill that restricts women's reproductive choices, and this time they are hiding behind the Vatican to do it.

Let me say it again. Catholic hospitals do not have to provide abortion services under current law, and individual providers at any health care facility can opt out of providing abortions by invoking a conscience clause. This is current law.

Let me tell my colleagues what most health care entities do have to do. They have to give women information about their options. A law preventing them from doing so is a gag rule, plain and simple. And the majority of people in this country want their full medical options and are fiercely opposed to gag rules.

Let me tell my colleagues what current laws that this bill would override. The Emergency Medical Treatment and Active Labor Act passed in 1986 requires that if a pregnant woman who comes to an emergency room is dying, is dying, due to the complications of the pregnancy, they have to try to save her life. If an abortion is deemed an immediate lifesaving measure, then they do have to provide one. This bill would overturn that.

So if you think it is acceptable for pregnant women to bleed to death in emergency rooms because some hospitals have a policy of no abortion even under the circumstances of the life of the mother or rape or incest, vote for this bill.

Today if a Medicaid patient comes to an emergency room after being raped and is found to be pregnant as a result of the rape, that hospital is at least obligated to give her a referral if she asks for one. This bill would overturn that. This bill would let a hospital say, I am sorry, you were raped, you want an abortion, but we cannot give you any information about that.

So if you want victims of rape or incest to be ignorant of their options, vote for this bill. If you want HMOs to have more power over what reproductive services they will pay for, vote for this bill. If you want to tell every city, State, and locality that we know better than they do how to provide reproductive health for their citizens, vote for this bill. But if you do not believe in gag rules, if you believe women deserve access to information, if you believe in States' rights, if you believe the women of this country have the right to make their own decisions about their health care, vote against this bill and, importantly, vote against the rule.

Mrs. MYRICK. Mr. Speaker, I yield 4 minutes to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, it has been fascinating to listen to the debate on the other side on this bill. This issue began in 1996 when some of the residency training programs were moving in a direction to require that to be certified and eligible to obtain one's license and specialty, such as OB/GYN, one could be forced to receive training in performing abortions. The Congress has a long-established track record of supporting the rights of conscience on this very, very controversial issue. There are many, many Americans, including many physicians, who feel as I do that abortion is morally wrong, that it is killing the unborn, and that nobody should be forced to learn how to do an abortion if they do not want to do it, and, importantly, no health care entity should be forced to perform abortions.

The original statute that was enacted over the signature of Bill Clinton was language that was actually put forward in the Senate by Senators Coates and SNOW. I will point out that she is pro-choice, and she stated at the time that she wanted to protect the rights of conscience, that people who feel strongly that abortion is killing should not be forced to have to do it. Now, that statute had some language in it that I thought was sufficiently broad. It says health care entities, and I thought a hospital was a health care entity. But the people on the left who are trying to advance the abortion agenda have managed to get courts to interpret that hospitals are not health care entities and that being that they receive Federal dollars and other State dollars, they could, and in the State of Alaska they have done this, be interpreted to be required to perform abortions.

If my colleagues do not think the left is trying to advance their agenda, I have this here in my hand. They have since taken this off their Web site. This is Maryland NARAL. It says: ''For these reasons Maryland NARAL is launching the Hospital Provider Project. The goal of the Hospital Provider Project is to increase access to abortion services by requiring Maryland hospitals to provide abortion and other reproductive health care.'' So that is really what this debate is about. They have found a loophole in the Federal law and they are trying to drive a truck through it. Eighty-five percent of hospitals in America today avoid this issue by not providing abortion services and a pro-abortion crowd of the court wants to drag them into court and interpret a statute which we thought protected the right of conscience in such a way that it would force them to have to provide this.

I want to touch on two things that people keep bringing up. Number one, this is going to interfere with all the Federal dollars. I do not know what else to say, other than that is a total misinterpretation of the statute. The interpretation that we have received is that, and these are decisions that have come out of the administration, that it will not interfere.

The other thing I want to comment on is this business about contraception. Contraception is not defined by the FDA as abortion. The morning-after pill is not defined by the FDA as abortion. It is defined as contraception. It is something different. So to interpret this statute to claim that it is going to prohibit access is to take essentially a religious entity's doctrine and put that into the statute, and it is just not there. It is not in the language.

So I know people can disagree on interpretations of law. When I look at this law and the legal scholars that I have had analyze it, they assert that that is a falsehood.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). Members are reminded to refrain from improper references to the other body, including characterizations of positions of the Senate or individual Senators.

Ms. SLAUGHTER. Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 2½ minutes to the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Speaker, as we heard earlier, this is an issue that deeply divides our country and us individually. I am passionately pro-life, and I believe it is a shame on America to watch these young kids get killed. But that is not what this bill is about.

This bill is about whether people who share my view about abortion have the right to practice their conscience in America and what are we doing to trample religious rights in America, of people who voluntarily join a health plan that shares their moral and religious beliefs.

Religious institutions, particularly the Catholic Church in this country, founded hospitals to care for the poor and to practice the saving of life. To be able in this country to force them to fund, provide abortion counseling or other things are anathema to their religious beliefs and is wrong.

The bill that my former employer, former Senator Coats, passed in the Senate, intended to address this conscience clause.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Will the gentleman suspend.

The Chair would remind Members to refrain from improper references to the other body, including characterizations of Senate actions.

Mr. SOUDER. As a former staff member, I think I have some flexibility for him.

The SPEAKER pro tempore. The Chair would remind all Members that we do have rules in the House, and the Chair would ask Members to abide by the rules.

Mr. SOUDER. Mr. Speaker, the question in Alaska overruled what was, in my opinion, at least, what my former employer intended to say, that the Alaska Supreme Court struck down the conscience clauses applied to the hospital, holding that there was no compelling State interest in the conscience rights of the hospital.

Now, if compelling State interests overrules a Federal law that is based on religious freedoms based on our Constitution and laws that are passed, we are in deep trouble.

You can see by the intent that my friend, the gentleman from Florida (Mr. WELDON), just referred to of the Maryland national abortion rights group, their goal is to force those of us who deeply feel that abortion is murder to be able to not have our own plans for healthcare, to not fund our own hospital systems, to not have any alternative but to fund what we view as one of the fundamental evils in the United States.

We can continue to fight abortion in this House and we will continue to fight about it, but those of us who deeply hold that this is a fundamental life should not be forced to fund in any way or participate in plans that require us to lay out dollars that require those of us who share that faith to practice what we believe is murder.

Furthermore, I was deeply offended by the line that said we are trying to hide behind the Vatican. The Council of Catholic Bishops, their pro-life activities have spoken out on this, and there should not be cheap shots at the Catholic Church or those of us who share many deeply held religious views based on those views.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to respond to the previous speaker who brought up the Alaska decision, because the Alaska Supreme Court concluded that the Alaska State Constitution requires that quasi-public hospitals provide abortion services.

Anti-choice forces use this decision to claim that private religious hospitals will be forced to perform abortions against their will. In fact, Valley Hospital is a non-religious institution with deep ties to the State and local government. It was built on land donated by the city using $10.7 million in State funds.

Perhaps most importantly, the hospital had been granted a monopoly by the State to operate in the Ma-Su Valley, effectively insulating it from competition in a wide geographic area.

Based on the significant ties to the State, the Alaska courts ruled the hospital was effectively public and that the Alaska State Constitution therefore prohibited the hospital from banning abortions.

This bill, if passed, would violate those basic principles of Federalism by abrogating this State court ruling.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentlewoman from Virginia (Mrs. JO ANN DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today to speak in support of the rule on H.R. 4691. This legislation does not give new rights, nor does it take away any. Rather, it is just a clarification of the current law.

As we previously heard from other speakers, in 1996, Congress overwhelmingly, and I repeat, overwhelmingly, approved the existing nondiscrimination statute that protects healthcare entities from being forced by the government to perform abortions. Only because of judicial misinterpretation are we here today to clarify that healthcare entities include all healthcare organizations, including hospitals.

I would like to note what is at stake here, and that is the freedom to abstain from performing an act that one considers to be morally and ethically wrong.

□ 1200

Catholic hospitals, which are particular targets, have had a long history of locating themselves in impoverished areas where not many others are willing to go. They do this as part of their ministry and yet, there is a movement to shut down these hospitals because they refuse to perform abortions. This is not only ridiculous, but it is callous to all of the people who will suffer without the services that these hospitals provide.

Mr. Speaker, we must stop infringing upon the rights of hospitals, hospital workers, and the patients that they serve. I urge my colleagues to vote ''yes'' on the rule and to vote ''yes'' on the final passage of H.R. 4691.

Ms. SLAUGHTER. Mr. Speaker, I yield myself 30 seconds.

Anybody who votes for this rule because they think that they are preserving religious exemptions is exactly wrong. Religious exemptions are already in law.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, to their everlasting credit, 86 percent of hospitals in America do not do abortions. Why? Because they are all about saving life, nurturing, and healing. Pregnancy is not a disease; the unborn child is not a wart or tumor to be killed. Chemical poisoning, literal dismemberment, abortions, are violence against children.

This is all about protecting the right of conscience. NARAL let the cat out of the bag on one their web sites. They said, Maryland NARAL is launching this hospital provider project to increase access to abortion services by requiring Maryland hospitals to provide abortion. They want to compel hospitals of conscience to do abortions—it's that simple.

Not all of the hospitals are religious. There are people who are not religious who have deep, moral convictions, and they believe that abortion takes the life of a baby. We ought to be nurturing. We should not compel our places of healing to become killing fields.

Ms. SLAUGHTER. Mr. Speaker, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentlewoman from New York.

The SPEAKER pro tempore (Mr. THORNBERRY). The time of the gentleman from New Jersey (Mr. SMITH) has expired.

Ms. SLAUGHTER. Mr. Speaker, I yield myself 30 seconds.

In one of those 85 percent of the hospitals that perform no abortions, if a woman should walk in bleeding, dying from a botched abortion, what would they do?

Mr. SMITH of New Jersey. Mr. Speaker, if the gentlewoman will yield, they would do everything to help that woman survive and, in the process of trying to heal her and to attend to her botched abortion, they would probably remove the baby who is probably already dead.

We are talking about doing everything to save both lives. That is what the hospitals and the emergency rooms

throughout this country are about. That is not what this issue is all about.

The SPEAKER pro tempore. The time of the gentlewoman from New York (Ms. SLAUGHTER) has expired.

Ms. SLAUGHTER. Mr. Speaker, I yield myself another minute, and then the gentleman may respond if he would like to.

Before Roe v. Wade was passed, women had no option in the world except to go to a back alley, turning themselves over to unspeakable people with filthy hands and dirty equipment, and oftentimes they had to go to doctors and hospitals to try to be saved. Does the gentleman from New Jersey know that many of those hospitals were afraid to take them? Is the gentleman aware that women died? Is the gentleman not aware that if this bill were to pass, that hospitals might again be afraid in a circumstance like that to save a woman, lest they violate this legislation?

Mr. SMITH of New Jersey. Mr. Speaker, this just says to opt out of the killing of unborn babies.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind all Members to address their remarks to the Chair and to properly yield time back and forth, not to enter into a conversation.

The gentlewoman from New York (Ms. SLAUGHTER) controls the time.

Ms. SLAUGHTER. The Speaker is perfectly right, Mr. Speaker, and I apologize. I simply want to make the case that if 85 percent of the hospitals refuse to give reproductive services in the United States, women will die.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 30 seconds to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, since Roe v. Wade, there have been in excess of 42 million unborn children killed by the abortionists, through chemical poisoning, through dismemberment, and most of those are for socioeconomic reasons: Abortion on demand. The baby was unwanted therefore he or she was expendible.

What the abortion lobby is attempting to do is to expand the number of places where those children can be destroyed.

Our hope is that Members will vote for this rule. There will be a motion to recommit, there will be an up-or-down vote on a motion that is from the pro-abortion side. I would hope that Members would vote ''no'' on that motion to recommit and then vote ''yes'' on the Bilirakis bill.

Ms. SLAUGHTER. Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE).

Mr. PENCE. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise today on certainly a matter of public policy and a matter of law, but I rise more passionately in support of this rule on a matter of conscience. I am a pro-life Member of this institution and I do not apologize for that. But today's debate I would offer humbly is not really about the debate over life and choice in America; today's debate is actually about the freedom to choose, which is a central tenet of the American experience.

In the same way that no one should be forced to honor a creed that they do not protest or honor a faith that they do not hold, no one and no institution, Mr. Speaker, should be forced to perform abortions against their will, their charter, their faith, their conscience. They should be able to choose, Mr. Speaker.

Now, we are debating here whether or not this institution will take measures to enforce the express will of this institution. Legislation that was signed by President Clinton in 1996 made the law which we seek to defend today the law of the land, Mr. Speaker, but through judicial activism from the bench in Alaska and elsewhere in America, our courts are abrogating the will of the American people as expressed in the laws passed in this institution. We rise today simply to clarify current law.

I say with great respect to my passionate colleagues on the other side of this issue, Mr. Speaker, that there is no hidden agenda here. This is not about denying funding to hospitals, or prescription drugs, or that women will die. The agenda here is very, very public. It is whether or not in America today, in America's health care institutions, there is the freedom to choose; whether there is a freedom of conscience, a freedom of religion, or whether the modern orthodoxy of abortion will be enforced on hospitals as the law of the land.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, sponsors of the bill do claim that this is just a simple clarification of existing law, but that is absolutely not the case. This is an enormous change in Federal law and would represent an unprecedented intrusion by Congress onto State and local rights. We need to think about that.

Mr. Speaker, all of us believe in life. Some of us simply believe that women should have the right to choose to live as well.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, the other side says this is about choice and, yet, when health care professionals, hospitals across the United States make a choice not to perform abortions, like 86 percent of them do today, abortion proponents have teamed up to force them to perform abortions anyway, regardless of religious objections, regardless of moral objections, regardless of conscientious objections. We have a conscience clause law passed in 1996 that talks about health care entities, but because of court opinions like the one by the Supreme Court in Alaska, we have to clarify that these entities do include hospitals.

Now, look at what the other side has said. They want to increase access to abortion services by requiring hospitals; it does not say suggest, it does not say urge, it does not say pressure, it says require every hospital in the State of Maryland to perform abortions. That means every Catholic hospital, every Lutheran hospital, every government hospital. That is what they want.

In New Jersey, the pro-abortion lobby sued Our Lady of Lourdes Health Care Services, that is a Catholic agency, and tried to force them to provide abortion. We have heard about Alaska where the pro-abortion lobby went after the Valley Hospital, from whom we heard testimony on the committee, who did not want to provide abortions in the small town of Palmer, and they actually succeeded in the court case that went up to the Supreme Court that ruled that they had to perform abortions.

What happened to the right to choose? What happened to the right of conscience? I guess the right of choice only applies if you agree with the pro-abortion lobby's agenda.

Mr. Speaker, no one should be forced to have an abortion; no one should be forced to perform an abortion.

The other side is talking here on the floor about a vast right-wing conspiracy. Well, if there is a conspiracy in America, maybe it is the vast left-wing conspiracy to shove abortion down everyone's throat. Support the rule, support the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

I want to say to the gentleman who just spoke that hospitals have been protected since the 1970s, and there is no question about that, and that we are very keen on our side on life and health.

I want to remind everybody of a little bit of history. I am sure all of my colleagues remember the great bill on community health centers which we have not been able to reauthorize for a year. At the end of last year it came up for reauthorization on the suspension calendar and, at the last minute, they attempted to add this piece of legislation to it, but there was such an outcry that they were forced to pull it off. So this year we are going back the other way around. This bill has to be dealt with before all of the community health centers in the United States can get their due from the Congress. That, sir, is a tragedy.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 229, nays 194, not voting 9, as follows:

[Roll No 410]

YEAS—229

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bereuter
Berry
Bilirakis
Blunt
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Costello
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Eshoo
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
King (NY)
Kingston
Kirk
Knollenberg
LaFalce
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Ortiz
Osborne
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shows
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—194

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Bass
Becerra
Bentsen
Berkley
Berman
Biggert
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Edwards
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frelinghuysen
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Greenwood
Gutierrez
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kilpatrick
Kind (WI)
Kleczka
Kolbe
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, Dan
Miller, George
Moore
Moran (VA)
Morella
Nadler
Napolitano
Neal
Obey
Olver
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shays
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Thomas
Thompson (CA)
Thompson (MS)
Tierney
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—9

Callahan
Maloney (NY)
Mascara
McKinney
Mink
Roukema
Stump
Thurman
Towns

□ 1237

Mr. HALL of Texas changed his vote from ''nay'' to ''yea.''

Ms. HARMAN, Mrs. BIGGERT and Mr. LANGEVIN changed their vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. BILIRAKIS. Mr. Speaker, pursuant to House Resolution 546, I call up the bill (H.R. 4691) to prohibit certain abortion-related discrimination in governmental activities, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 4691 is as follows:

H.R. 4691

*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 ''Abortion Non-Discrimination Act of 2002''.

**SEC. 2. ABORTION NON-DISCRIMINATION.**

Section 245 of the Public Health Service Act (42 U.S.C. 238n) is amended—

(1) in the section heading, by striking ''REGARDING TRAINING AND LICENSING OF PHYSICIANS'' and inserting ''REGARDING TRAINING, LICENSING, AND PRACTICE OF PHYSICIANS AND OTHER HEALTH CARE ENTITIES'';

(2) in subsection (a)(1), by striking ''to perform such abortions'' and inserting ''to perform, provide coverage of, or pay for induced abortions''; and

(3) in subsection (c)(2)—

(A) by inserting ''or other health professional,'' after ''an individual physician'';

(B) by striking ''and a participant'' and inserting ''a participant''; and

(C) by inserting before the period the following: '', a hospital, a provider sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization or plan''.

The SPEAKER pro tempore (Mr. THORNBERRY). Pursuant to House Resolution 546, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased that this important legislation is before us today. We introduced H.R. 4691, the Abortion Nondiscrimination Act, to provide clarity, and I want to emphasize that, to provide clarity to an existing law, I emphasize that, to an existing law, that protects health care entities from being forced to perform abortions against their consciences. The bottom line purpose of this bill is that.

In 1996, the Congress passed and former President Clinton signed the current statute into law which is known as conscience protection. This law was intended to ensure that no health care entity would be discriminated against on the basis that they did not perform abortions. However, court interpretations have called into question whether these sections of law apply to hospitals that object to offering abortions. That is why we must act quickly to clarify existing law to ensure that these protections are afforded to all types of health care entities.

Mr. Speaker, I would like to clarify two points in debate on this bill. Some have charged that this legislation is a massive expansion of current protections; and, Mr. Speaker, that is just false. The original law was intended, whatever happened to legislative intent for crying out loud, the original law was intended to apply to the broadest definition of health care entities. Transcripts from the debates in 1996 and in extensions of remarks in 1998

show that the original authors of the conscience protection intended a broad definition, a broad definition of health care entity. The other contention is that somehow this bill would allow facilities to not provide life saving care. Again, this is false. In fact, in all cases, facilities are regulated, as we know, by laws that require the provision of life saving care and all hospitals are prepared to provide appropriate life saving care.

What this bill does do is protect facilities from being mandated to offer abortions. We must ask ourselves if we want to force people to provide elective procedures that are fundamentally in opposition to their consciences. The gentleman from Indiana (Mr. PENCE) said it very well during the debate on the rule. ''I would add that neither the American Medical Association, nor the American Hospital Association believe that anyone, anyone, should be forced to provide elective care against their conscience,'' and again I emphasize elective care, against their conscience.

Mr. Speaker, this bill is really a very simple technical correction. It is not a massive expansion or a policy to limit access to health care for women. On the contrary, this bill ensures that all facilities will continue to be free to provide the types of services that they find appropriate, and it will not force facilities to close because of fundamental objections to elective medical procedures.

Mr. Speaker, this is a good bill and I urge all of my colleagues to support H.R. 4691.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are spending a few hours today debating the abortion nondiscrimination bill. Despite this bill's troubling implications for women and despite the strong concerns many of my colleagues and I have about the bill, Republican leadership bypassed the committee and brought it straight to the floor.

While we debate this bill today, a number of issues continue to languish. When my colleagues and I have asked Republican leadership to hold a hearing on legislation that promotes greater competition in the prescription drug marketplace and brings down the cost of prescription drugs, they did nothing. When we asked them to bring the competition bill to the floor, they did nothing.

The Senate has passed similar legislation. If we were to debate it on the floor today, we would pass it, and we would be one step closer to bringing down the cost of prescription drugs. Yet, this Republican leadership is going to send us home before our work is done without passing a bill to cover prescription drugs, without passing a bill to try to get the price of prescription drugs down.

Now, today's House Republicans are proposing legislation that curtails health care information and curtails services available to women, again, before they bring something as important as prescription drug pricing to the floor. The public has every right to question the priorities of Republican leadership. While the partisan proponents of this bill, H.R. 4691, while the partisan proponents of this bill say it is a simple clarification of existing law, experts agree it is a broad, sweeping change to existing law.

□ 1245

Federal law now allows doctors and hospitals to refuse to perform abortion services because of their religious beliefs. That is Federal law. That is the way it should be. That is what we all agree on.

This bill, however, allows insurance plans and HMOs, not religious organizations, insurance plans and HMOs to refuse to provide or to make a referral for abortion services regardless of religious background, regardless of a woman's medical needs. Under this bill, insurance companies could deny coverage of family planning services just because the time spent with the patient doing nondirective counseling just might eat away at the HMO's bottom line.

Under this bill, Medicaid patients would no longer be guaranteed access to abortion counseling, to abortion counseling in cases of rape and incest, or where the pregnancy endangers the woman's life. Under this bill, State law expanding health insurance requirements to include coverage of nondirective family planning counseling would become irrelevant.

The current conscience clause allows doctors and hospitals to refuse to provide services they are opposed to for religious reasons. That is the way it should be. This bill, however, gags doctors, gags hospitals, regardless of their religious belief. It denies women access to medically necessary services, again regardless of religious beliefs.

Existing law protects a woman's right to medically accurate information. It protects a State's right to govern by its constitution and its laws, and my friends on the other side of the aisle always talk about States rights, unless they do not like the State law. It protects the medical institution's right to refuse to provide services they are religiously opposed to.

Mr. Speaker, we should have passed the prescription drug bill. We are obviously not doing that today. We should be promoting women's health. We are sure not doing that today. What we are doing is compromising women's health.

I urge my colleagues to oppose this expansive, broad-ranging infringement on women's rights and infringement on women's health. It is a bad bill. Vote ''no.''

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

The gentleman easily forgets that we passed a prescription drug bill last June, and it is the other body which has sat on it.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. PITTS), a member of the committee.

Mr. PITTS. Mr. Speaker, in America we believe in rights. We believe in the right of free speech. We believe in the right to choose our religion, right to peaceably assemble, other rights that are enshrined in our Declaration of Independence and every American's right to act according to the dictates of his conscience.

Historically, this right to conscience has applied to individuals and to private organizations as well. In 1996, Congress enacted a law to protect the right of a health care entity to decline to participate in abortion and if they had a conscience against killing unborn children, to decline to participate in this. However, some have read the 1996 law very narrowly to say that it protects only residents and residency programs and only in a training context, and we have had court decisions saying that this health care entity language does not include the full range of participants in providing health care, such as hospitals and health plans and professionals of the facilities.

So this bill, ANDA, the Abortion Non-Discrimination Act, would clarify existing law, strengthen existing law by providing that health care entities should not be forced by the government to pay for abortions or be penalized or discriminated against by government agencies for choosing not to provide or to perform abortions which 86 percent of our hospitals presently choose. It is needed to respond to this national effort that was referred to earlier on the floor by certain groups to force all health care providers to participate in abortions; and we have cited examples in New Jersey, in Alaska, others in Connecticut, in New Hampshire, various places.

So the opponents raise issues like gag rule. Protection from being forced to do abortion referral is part of the 1996 law now. This bill does not create it. Exemption from informed consent or counseling requirements is not found in the 1996 law or in this bill. There is no gag rule here. The bill's protections apply to those who do not want to perform or to make arrangements for or to subsidize abortions against their will.

Mr. Speaker, this is not a radical law. This is reasonable. Pro-choicers and pro-lifers have sponsored this bill that we have before us today. We should not force Catholic hospitals to refer for abortion or provide for abortion or other hospitals who have a conscience against it. I urge support of the bill.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I would add that the gentleman from Florida (Mr. BILIRAKIS) mentioned this House passed a drug bill in June, one written by the drug companies and advertised by the drug companies and does not serve consumers.

Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. WAXMAN), who had an amendment he wanted to offer to this bill that the partisan majority would not allow him to offer yesterday in the Committee on Rules.

Mr. WAXMAN. Mr. Speaker, the bill before us is an enormous change in current policy about reproductive health, about patients' rights and about federalism. It is not a simple clarification as some have termed it. That may well be the reason we have this process of getting to the floor without markups in committee or subcommittee, without any chance on the floor to offer an amendment.

Let me explain why I say this is a very, very radical bill.

Under current law, beginning since the time of Roe v. Wade, there have been Federal laws that allow doctors, nurses and hospitals to refuse to perform abortion services because of their religious beliefs, and they still can get Federal funds for other services. Catholic doctors do not have to perform abortions. Catholic hospitals do not have to support abortion clinics. This permission for people to refuse because of their religious or moral objection is established already in the law and it is working smoothly, but this bill goes far beyond that.

This bill first and most obvious is not a bill about religion or conscience. While current law says that doctors and hospitals can exercise their religious or moral objections, this bill is not defined in that way. This bill would allow insurance companies and HMOs to ignore laws about patients' information and gag rules because they want to cut costs, because they want to reduce benefits or for no reason at all. Any HMO could gag its doctor, not because HMOs have a conscience, but because they would rather cut time with the patient from 9 minutes to 8. Any public hospital could decide that it would be easier if they did not have a protester out front. Further, this bill would allow the gag rule to govern for title X family planning grantees and this would reverse long-standing policy of providing nondirective information on all options.

Secondly, this bill is not just about doctors or even hospitals refusing to provide services. Those people are given permission to refuse under current law. This bill lets hospitals, insurance plans, HMOs and other corporate entities to gag their doctors and nurses from giving medically appropriate information to their patients. In other words, it would allow them to engage in what is medical malpractice, not giving the information their patients are entitled to receive.

We have tried to get a Patients' Bill of Rights enacted. We have had differences on the ability to sue to enforce those rights, but this bill instead provides a legal protection for a gag. It takes away patients' rights. This is a patients' bill of nonrights and having totally failed to enact the bill to protect patients' rights from the abuse of managed care, the majority is now moving to undo the efforts to those States who have enacted their own patient protection law.

That is the last point I want to make. It overrides State laws. It overrides the constitution in the State of Alaska where it says that a public hospital who is the only provider of services in the entire region must be available for legal abortion services. We should not overturn lightly the constitution of the State of Alaska. We are not here to regulate health insurance at the Federal level. That is what most of my Republican colleagues would object to, and yet they allow this to happen.

This is not a bill about religion. It is not about equal protection. It is the exact opposite, of guaranteeing constitutional rights to safe and legal abortions, family planning and medical privacy; and there is no Federal legitimate purpose here.

I would urge Members to oppose this bill and support the motion to recommit which will make this do what the authors say they want to do.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. VITTER).

Mr. VITTER. Mr. Speaker, I rise today in strong support of the Abortion Non-Discrimination Act, H.R. 4691. The bill before us is, in fact, a much-needed clarification of current law that was meant to provide full conscience protection to health entities, health providers who because of any moral convictions choose not to have anything to do with abortion; but unfortunately today, we will hear a lot of overblown rhetoric from the other side that the sky is falling, that this simple bill is something much more, when it is not, and arguments from people interestingly who say they are pro-choice, yet apparently when a hospital or a clinic or a provider, a doctor makes a choice, the right choice in my opinion, and chooses life, the other side is up in arms.

We have statements and they are documented from proabortion groups that they are actively engaged in a project to force all hospitals, often against their will or moral convictions, to provide abortions; and we know that the ACLU files lawsuits to force providers to perform abortions in States across the country, and sadly, sometimes activist courts find in their favor.

This really exposes the choice side for what they really believe in, which is not choice at all; and it flies in the face of all of their superficial choice rhetoric. It exposes the real proabortion agenda. Furthermore, it makes this commonsense legislation a necessary response from Congress whose intent in the original legislation was clearly to provide full conscience protection, and that intent clearly has been maligned in significant cases.

I want to thank and commend the gentleman from Louisiana (Mr. TAUZIN), the Committee on Energy and Commerce chairman, as well as the gentleman from Florida (Mr. BILIRAKIS), the subcommittee chairman, for their tremendous efforts in guiding this valuable legislation to the floor, and I urge adoption.

Mr. BROWN of Ohio. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. CAPPS), a member of the committee.

Mrs. CAPPS. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today not only as an elected representative but also as a public health nurse and as the former director of the Santa Barbara School District Teenage Parenting and Pregnancy Project.

I have firsthand experience with the struggles of many young women around the difficult subject of sex. I have dealt with teenagers trying to cope with the ramifications of bad decisions, and I have seen the terrible results when we turn our back and deny them help.

I am deeply troubled by this bill. I consider myself a religious person, and I hold in high respect the deep-seated values and feelings of Americans on the subject of productive health, but no one should have the authority to force his or her personal views upon others.

The Abortion Non-Discrimination Act does just that by overruling a State's rights to enforce laws and to design its own Medicaid program. This legislation is harmful to women. It would allow health care entities to refuse to comply with Federal, State and local laws pertaining to abortion services and referrals.

Under this measure, recipients of title X funds could defy current requirements that enable a woman to receive information upon request about all legal reproductive options.

□ 1300

Not only does this legislation deny women access to vital medical care, it is also unnecessary. Current law already protects the rights of individuals with religious or conscientious objection who may opt out of providing abortion-related services if they so choose; but institutions do not have the same rights as individuals, nor should they. Health care facilities exist to provide services. It should be rare when such a facility denies access to care to anyone. And all a health facility is required to do is to give a woman a referral upon request and to provide an abortion only if they choose in cases of rape or incest or when the life of the mother is in danger.

Mr. Speaker, it is clear that existing law gives sufficient deference to moral objections. Enacting broader conscience or refusal clauses for health entities only leaves women without medical services that they have a constitutional right to.

For decades women have fought to gain access to the reproductive health

services that they need. Last year alone, title X services enabled women to avoid 1 million unintended pregnancies, nearly half of which would have ended in abortion.

This bill would reverse these proven success rates. In fact, this bill is so confusing, it does not even define what an abortion is. And so I respectfully ask the honorable gentleman from Florida (Mr. BILIRAKIS) to explain. Is emergency contraception an abortion? How about oral contraceptives? How about condoms or even advice on where to get this information?

Before we vote, I respectfully ask the gentleman from Florida (Mr. BILIRAKIS) to define what constitutes an abortion.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such additional time as I might require.

I guess I have to continue to respond to statements made by the gentleman from Ohio (Mr. BROWN), my good friend and the ranking member of my subcommittee, when he talks about prescription drugs. The bill was not written by the drug companies. If the drug companies had anything to do with the bill, I certainly did not know about it; and I played a large part in that.

I am talking about a prescription drug bill for seniors now. The bill as it was written was not perfect, but it consisted of $50 billion more than the minority had placed in their budget and intended to write a bill in the previous Congress. So it is more expensive than the bill that they came up with previously. The bill would help the poor to a very large extent. It would help the very sick to a tremendous extent, and it would help an awful lot of people in between; and it is unfortunate that politics is being played with a piece of legislation which is far from perfect, which is not something that we all would like to see ultimately take place but something that would help people at this point in time.

I would go on, Mr. Speaker, and I would like to read from additional views of Senators Coats, GREGG, FRIST, DEWINE, MCCONNELL, and HUTCHINSON in 1998 during the debate.

PARLIAMENTARY INQUIRY

Mr. BILIRAKIS. Mr. Speaker, is that permissible for me to read?

The SPEAKER pro tempore (Mr. THORNBERRY). Does the gentleman state a parliamentary inquiry?

Mr. BILIRAKIS. I guess I am. I noticed the Parliamentarian stood up.

The SPEAKER pro tempore. The Chair would inquire is it related to proceedings regarding the legislative history on the bill the House is considering?

Mr. BILIRAKIS. It is definitely related to it.

The SPEAKER pro tempore. The gentleman may proceed.

Mr. BILIRAKIS. In any case, this took place during the Health Professions Education Partnerships Act of 1998, and the additional views said Congress explained that the term ''health care entity'' includes an individual physician, a post-graduate physician training program, and a participant in a program of training in the health professions, 42 U.S.C. 238n(c)(2)(1996).

They went on to say, and I read verbatim, and this is significant, Mr. Speaker, because of claims made by the other side that this is an expansion of what was intended at that point in time: ''We believe that the term 'health care entity' in 42 U.S.C. 238n was intended to be read in the straightforward manner of 'including' not only the specific entities mentioned but also those which are routinely seen as health care entities in common usage and other Federal laws, such as a hospital, provider sponsored entity, health maintenance organization, health plan, or any other type of health . . . entities generally seen as 'health care entities' under Federal law. We intend to explore other means of definitively resolving this question of legislative intent.'' And that was signed by the Senators that I mentioned earlier.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

The gentleman from Florida (Mr. BILIRAKIS), my friend, said that the drug companies did not write the drug bill that this House in a partisan vote passed. I guess we are all mistaken, but I would like to recount for a moment how this drug legislation passed this House of Representatives.

Back in June we worked on a markup on a bill that the drug companies were totally in support of. There was a fundraiser that had been scheduled for one evening. We stopped the markup so that Republicans could troop off to the fundraiser with the President and the Vice President which raised $30 million, $3 million of it from drug companies. The sponsor of the fundraiser, the chairman of it, was the CEO of a British drug company, GlaxoSmithKline, which gave $300,000 to the Republican campaign coffers.

The next day we came back, passed a bill, defeated every amendment on a partisan vote that was a proconsumer, prosenior amendment. The bill then passed in a partisan vote. It passed the House in a partisan vote.

And then in the most cynical move I have seen in 10 years in Congress, the drug companies spent literally millions of dollars advertising on television, thanking the Republicans for passing their drug bill. The only thing was, Mr. Speaker, they did not say ''paid for by'' Pfizer or Merck or Eli Lilly or Pharmacia or Glaxo. They said paid for by United Seniors Association or paid for by 60 Plus. So the drug companies spent millions of dollars thanking the Republicans, but they used a front group to make it look like it was a senior organization or actually two senior organizations thanking the Republicans.

If the public only knew that all those ads were paid for by the drug industry, then Republican Members of Congress would not be getting calls thanking them for voting for it. They would be getting calls saying go back to Washington and pass a drug bill that actually helps seniors, that actually helps consumers, that does not help the drug industry continue to be the most profitable industry in America, continue to be in a situation where they pay the lowest tax rate of any industry in America. And I think people in this country have had enough and we are going to find a little more about that come November.

Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Speaker, I thank the gentleman for yielding me this time and for his leadership on this issue and so many issues important to the health of all Americans.

Mr. Speaker, I rise today in very strong opposition to this politically motivated anti-woman bill. How could we as representatives of the people lawfully permit health care providers to really ignore the Constitution and the Supreme Court?

Let us be clear. H.R. 4691 radically alters current law and could gag health care providers from giving women, who may face an unintended pregnancy, including rape and incest, all of her legal medical options.

This is really a domestic version of the global gag rule which really should be repealed. This bill would muzzle health care providers who participate in the title X program by eliminating providers' options which enable women to receive information upon request, just upon request, about all of their available medical options.

In the absence of a referral requirement, health care providers may be able to effectively gag health care practitioners from giving such referrals to women who request them. This bill is really outrageous. It is simply another in the long parade of bad bills the majority continues to schedule in order to promote their political ideology and their political message while avoiding and refusing to schedule the real work of the House.

Mr. Speaker, where is the Labor-HHS appropriations bill? Why are we not working on that today instead of considering legislation that amounts to nothing more than a dangerous assault on women's reproductive rights? We should be funding the important health programs in the Labor-HHS bill. I urge Members to vote ''yes'' on the motion to recommit and ''no'' on this very bad bill.

Mrs. CAPPS. Mr. Speaker, will the gentlewoman yield?

Ms. LEE. I yield to the gentlewoman from California.

Mrs. CAPPS. Mr. Speaker, I request from the gentleman from Florida (Chairman BILIRAKIS) a definition of the term ''abortion.'' As we prepare to vote on this very important legislation, could the gentleman help us

frame what we are voting about? Are we voting about a surgical procedure? Are we voting about emergency contraception? Does an abortion constitute oral contraception or condoms?

Mr. BILIRAKIS. Mr. Speaker, will the gentlewoman yield?

Ms. LEE. I yield to the gentleman from Florida.

Mr. BILIRAKIS. Mr. Speaker, I would advise the gentlewoman, this is not about abortion. This is about freedom. This is what has been said before, and said over again. That is why I read the statement I just read, basically giving people the moral rights to make their decisions. That is what it is all about.

I am not going to give the gentlewoman a definition for abortion or anything of that nature. It is not pertinent to this legislation.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, my esteemed colleague on the other side said existing laws protects only religiously affiliated health care providers from forced involvement in abortion and that this bill expands that. That is absolutely false. H.R. 4691 does not expand the law at all on this point. Existing law protects secular as well as religious providers.

H.R. 4691 clarifies the definition of health care entity in this law so it clearly covers nurses as well as physicians, hospitals, as well as training programs in hospitals. This charge of expanding the law beyond religious to secular entities I think is a red herring.

About title X, compromising the ability of title X clients to obtain information critical to their health, I think that is false. Nothing in H.R. 4691 limits Federal or State agency's abilities to require the provision of accurate information about abortion or abortion providers.

Under H.R. 4691, government may not penalize a private health care entity for declining to provide or make arrangements for abortions. States should not be able to force people or hospitals to be involved in an abortion, especially when they try to base the right to coerce on the fact that medical institutions receive Federal funding.

Conscience protection is a civil right. The Federal Government has the right and the duty to protect conscience by making sure that any entity that receives Federal funding does not discriminate against any person or organization just because they do not want to be involved in an abortion. I might say that 46 States in our country presently have conscience protection laws.

I might quote from the American Medical Association. They say: ''Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles.''

Mr. BROWN of Ohio. Mr. Speaker, I yield myself 30 seconds.

The other side of the aisle has repeatedly quoted the American Medical Association. Members need to understand they have taken no position on this bill. They are not in support of it. They have not taken a position either way.

However, the American College of Obstetricians and Gynecologists have asked for a ''no'' vote on this bill because they really understand this issue better than anyone. They know this bill is not a minor change in Federal law, but a broad-reaching change that denies information and access to women, even women whose health is in jeopardy or women who have been raped or are victims of incest.

Mr. Speaker, I yield 3 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, in the prior exchange, the failure of the gentleman from Florida (Mr. BILIRAKIS) to indicate what an abortion is was an important concession because in effect it says an abortion is anything that a provider says it is. It makes this legislation completely untenable.

What we are witnessing is the umpteenth attempt of the Republicans to invade Roe v. Wade. I have to give the majority credit, though; the majority is determined to deny a woman the right to control her own body by any means necessary. That is why they keep coming to the floor with these provisions.

□ 1315

Yes, this bill is about discrimination, discrimination against women and discrimination against the States. They wrap themselves in a conscience clause cloak. We could never have gotten this far if we did not have ironclad conscience clause protection in our law.

I have got two great Catholic universities in my district, Georgetown University, with which I am personally associated as a tenured law professor, and Catholic University. Georgetown University Provident Hospital does not have the slightest doubt that they and their health care services already are strenuously covered by the existing conscience clause.

This is not a conscience clause. This is a cop-out clause. What it does essentially is to open the floodgates. The first to take advantage of this clause are going to be the health care plans and the HMOs. These are the guys who are already saying to physicians, we're timing you on how much time you can spend with patients urgently in need of health care. Do you think they are going to continue to give informed consent by providing the kind of counseling that Federal law provides? They know a loophole when they see one.

We have already closed every Federal door to a woman's right to choose with a Hyde amendment and with a plethora of other provisions. Now we have gone to the next level. We are invading States rights and the rights of the States to provide health care by changing Federal law to invade State territory. Ever since Roe, we have said not with Federal dollars. Now we are telling the States what to do with their dollars and what to do with their laws.

Let the States' rights Republicans take a page out of their own prayer book. Stand down. Let the States run their own State health care systems.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume to read from the American Medical Association Code of Ethics, H–5.995, on abortion. It goes on to say, ''Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles. In these circumstances, good medical practice requires only that the physician or other professional withdraw from the case, so long as the withdrawal is consistent with good medical practice.''

That is the gist of this piece of legislation, intending to clarify what was intended back in 1996. I have not looked up who voted for that bill or who voted against it, but the fact of the matter is that is the bottom line of what we are trying to accomplish today.

Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. I thank my good friend for yielding time. I want to compliment him on his leadership as well as his courage in offering this bill today.

Mr. Speaker, a moment ago, the gentlewoman from the District of Columbia talked about this being the umpteenth time that we have dealt with the abortion issue. Frankly, I am very proud of the fact that prolifers have refused to roll over, those of us who have a moral and a conscientious objection to the killing of unborn children and the injuring of their mothers, do whatever we can, whenever we can to preserve at least some of the lives who otherwise would be destroyed by the violence of abortion.

Let us not forget what we are talking about. Abortion either dismembers unborn children or it chemically poisons unborn children and it does it in a horrific way. It is a painful, violent death imposed upon children and it also is injurious to mothers, especially in a psychological way and in long-lasting physical ways. What we are dealing with today, Mr. Speaker, is conscience protection for hospitals and those institutions that protect and preserve and nurture life so that they will not be coerced into performing abortions or referring for abortions.

I would remind my colleagues that OLYMPIA SNOWE, who is not a pro-lifer, said when this was up in 1996 that an institution or an individual who does not want to perform an abortion should not be compelled to do so in a way that is contrary to their beliefs. Unfortunately, while the intent of the legislation signed by the President in 1996 was clear, the language apparently was not, or at least in the eyes of some, and

some courts and some attorneys general have been trying to compel health organizations, hospitals, to be involved in abortions.

Some courts and pro-abortion groups are so extreme that they want to force hospitals to do abortions against their will. The whole board of directors, the hospital staff could say we will not participate in this anti-life child battering enterprise but they could be compelled by a State or by some court to do so absent the enactment of this legislation.

In my own home State of New Jersey, Elizabeth General Medical Center agreed to consolidate with St. Elizabeth's Hospital and no longer perform abortions. Subsequently a New Jersey Superior Court judge reviewing the consolidation issued an outrageous judgment that brought the pro-abortion organizations into the equation and approved a settlement to place $2 million in a trust for the performance of abortions and abortion referrals. In other words, they got money from the pro-lifers to enable the killing of unborn children.

This debate is all about human rights, I say to my friends, about child violence. We can mask it, we can sanitize it and we do. We do it quite well. We are Members of Congress. We are politicians. But the fact of the matter is that killing unborn children is violence against children, and dismemberment and chemical poisoning in no way can be construed to be a benign act. It kills babies. Look at the ultrasounds and the great progress that has been made in refining ultrasounds. Today you can see a baby in great detail before birth. The abortionist looks at that same reality—that same baby and kills that baby. I think it is to their credit that 86 percent of all the hospitals in America are all about lifesaving and nurturing and healing—they refuse to do abortions. They are not about killing babies. They are not about putting poisons into their amniotic sacs in order to procure a baby's death. They are not about dismembering the arms and the legs and the torso and the head—decapitation is commonplace in the abortion mills all over America, with 42 to 43 million dead babies and counting a horrific loss of life.

Now we see the abortion lobby, and NARAL makes it very clear, they have a plan when there are consolidations to make sure that these hospitals who are now pro-life, whether they are religiously affiliated or not, to provide abortions. NARAL says it very clearly on one of their websites and we know that this is part of an aggresive strategy, to expand abortions where they are absolutely not wanted. Babies are precious. Their mothers are precious. Let us promote lifesaving, nonviolent alternatives to abortion, not the enabling and the killing of babies.

Someday every Member who has been voting for abortion will rue the day. They will wake up in the middle of the night and say, how could I? Just like looking back in antiquity we look back and say how could people like Washington and Jefferson and others have had slaves? There was a blind spot then. There is a blind spot today. Abortion is violence against children. Brown enables it and expands it. Vote for the Bilirakis bill and against the Brown motion to recommit.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself 1 minute.

Of course we are not telling hospitals and doctors to provide abortions. We have already settled that issue. No doctor, no hospital should be forced to do that. We are just saying that a woman who has been raped or a woman who has been a victim of incest, whose life because of the pregnancy might be in danger, who comes to a hospital, comes to any hospital, should be given access to information, should be referred, should be told where she might be able to get counseling or might be able to get help. That is all that we are saying, that we know this legislation takes that right away.

Again, think about that. Imagine, a woman who has been raped, a woman who has been a victim of incest, who is pregnant, whose life may be in danger from that pregnancy gets turned away from a hospital under this legislation, gets turned away from a hospital, nobody will talk to her because this rigid, far-right agenda of the Republican Party says we are against abortion and we make no exceptions for rape, we make no exceptions for incest, we make no exceptions for the health of the mother.

Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. MILLENDER-MCDONALD).

(Ms. MILLENDER-MCDONALD asked and was given permission to revise and extend her remarks.)

Ms. MILLENDER-MCDONALD. Mr. Speaker, I thank the gentleman from Ohio in his efforts to try to bring some sanity to this bill.

I would like to ask the gentleman from Florida (Mr. BILIRAKIS), it seems to me that it is a moral obligation to ensure that information regarding the reproductive rights of women be given to her. And is it not true that institutions cannot restrict providers from offering medically appropriate information and services? Can you answer that for me?

Mr. BILIRAKIS. The only answer I will give the gentlewoman is that this is not intended to be an expansion on what is already law. We are trying to clarify as a result of court action that has taken place regarding the legislation that now exists.

Ms. MILLENDER-MCDONALD. So this bill then has an opt-out of performing any abortion services, including counseling or referral? Does this bill do that? It opts out performing any abortion services, counseling or referral?

Mr. BILIRAKIS. It is not intended to do that, nor does the bill say that.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. THORNBERRY). All Members will suspend.

The Chair would remind all Members to direct their remarks to the Chair and if they seek to yield time, to formally yield time to other Members and then that time can be yielded back.

Ms. MILLENDER-MCDONALD. I thank the Speaker very much for that.

I again just cannot believe that we are here today to speak about yet another assault on women's fundamental rights to be informed regarding all of her reproductive rights. Just over 2 months ago, we were here again advocating against the passage of legislation banning another aspect of a woman's reproductive choice. Today we stand again to defend a woman's basic rights to be informed of her options with regards to her reproductive health when she is most vulnerable. As we have mentioned and stated, it is not our mission to dictate the most personal choice any woman can ever make regarding her health. We are here to pass fair, effective legislation that will guarantee all women the opportunity to make the best possible decisions about her health. Besides, infringing on a woman's right to decide what is best for her health as in the case of H.R. 4691 will undermine States' rights to enforce their own constitutional protections. This sets a dangerous precedent, Mr. Speaker, if we begin to violate the principles of Federal law by essentially overruling State constitutions. We should not attempt to block Federal title X guidelines that allow women full access to information with regard to their reproductive health choices.

If this piece of legislation passes, H.R. 4691, we would prevent the Federal Government from enforcing its own requirement with reference to title X-funded clinics that refer patients to abortion providers upon request. Further, passage of H.R. 4691 would prevent States from following the Hyde amendment which mandates that Medicaid patients be informed about legal abortion services in the event of rape, incest or a pregnancy that threatens a woman's life.

I say, let us defeat this bill that does not give women their reproductive choices.

Mr. BILIRAKIS. Mr. Speaker, I yield 5 minutes to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, I thank the gentleman for yielding me this time. I want to rise in strong support of this bill and reiterate some of the points that I made in my comments in the debate on the rule. This bill has been characterized by its opponents as an assault on their side of the issue, the pro-abortion or pro-choice side. I would argue very, very strongly that that is very much not the case. The law as I interpret it is very, very clear. It seeks to clarify the conscience clause that was enacted by this body

and signed into law by the President of the United States, William Jefferson Clinton, in 1996. This dispute arose over a disagreement surrounding a requirement that physicians in training, residents, be forced to learn how to do abortions to get their accreditation and get their license to practice obstetrics and gynecology when in fact they were personally opposed to doing abortions. For most Members of the House, that was a no-brainer. If you are pro-life, why should we the government have laws and regulations that would force a physician in training to have to learn to do a procedure that they find morally and ethically repugnant?

Under the provisions of the law, and I have a copy of the law right here, we encompassed it to include health care entities. I interpreted that at the time, I was here, I voted for it, that it would also include some obvious health care entities like hospitals and HMOs.

□ 1330

But under the aggressive attempt on the part of the pro-choice community to expand the availability of abortion procedures in America, they have used the courts, which has always been their traditional tool to advance their agenda, to expand or redefine the law such that a hospital or an HMO is not a health care entity.

What we seek to do in this statute is to just clarify that act. To define us as engaging in this great assault on Row v. Wade, when really what we are trying to do is protect freedom of conscience or freedom of choice, to me, is just not an accurate interpretation of it.

As far as some of these claims and assertions that we will prevent people from being counseled, if you look at the language, it is very, very clear. If any health care entity voluntarily elects not only to train people to do abortions, but as well to perform them, or refer for an abortion, that is not infringed by this act.

I want to clarify another very, very important thing, I know this is a very sensitive issue for a lot of Members in the body, and this is this debate about contraception.

There have been people who have come to this floor today and tried to assert that the language in this bill would bar the provision of contraception services in many institutions that are already providing it. Please show me in the statute where you find that interpretation. I think it could be described as a tremendous misinterpretation or a tremendous stretch of the imagination.

The provision of contraceptive services has never been defined as abortion in Federal statute, nor has emergency contraception, what has commonly been interpreted as the morning-after pill. Now, some religious groups may interpret that as abortion, but we make no reference in this statute to religious groups or their definitions; and under the current FDA policy that is considered contraception, and it is not affected at all by this statute.

This law, in my opinion, represents a very clear attempt to prevent what I consider to be the extreme agenda of the pro-abortion community to try to advance what they want to do.

We have had many people come down to the floor quoting from a NARAL Web site about their agenda, which is to force many institutions, and 85 percent of hospitals in America today do not provide abortion services, to force them to do that, using current Federal laws and statutes.

Mr. Speaker, this piece of legislation, I think, is very clear. It is not ambiguous. Its intent is to protect the freedom of these institutions to not engage in this procedure.

I ask Members to support this bill.

Mr. BROWN of Ohio. Mr. Speaker, I yield 3½ minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I rise in opposition to this bill. I think a dose of reality may be helpful in this debate.

The extremist pro-abortion, pro-choice forces want women to have their constitutional rights. The people who have gotten 85 percent of the hospitals in this country not to be willing to provide an abortion to a woman who requests it want to deny, to make it impossible, for women to exercise what the Supreme Court says is their constitutional right. That is the crux of the debate.

Let us have a dose of reality.

Fact one: this bill has never been considered by any committee of this House, not in hearings, not in markup, not ever. A cynical person might view it as a crass attempt to pander to an extremist constituency on the eve of an election, especially since we know it is dead on arrival in the Senate. But you do not have to be cynical to know that this bill needs to be looked at more carefully, at the very least. Every Member should make up for the negligence of the committees of jurisdiction in not considering this bill by reading the fine print and not listening only to the rhetoric.

Fact two: this bill, despite its lofty title, is not about discrimination. It would cancel out every State law protecting a woman's right to choice and the right of every American to demand health care coverage that meets her medical needs. This Congress has failed to act on prescription drug coverage. This Congress has killed any hope of universal health care coverage. Now the Republican leadership of the House wants to help the for-profit health care industry rob our constituents of medical services to which they have a constitutional right.

Fact three: this bill is not about religious liberty or conscience. Read the bill. Copies of it are sitting on the table just outside the Chamber. The bill covers any hospital, any HMO, any insurer, any facility, any organization, any plan, even if they are for-profit, even if they do not have religious or moral objections to an abortion. I am not aware that HMOs or insurance companies have religious consciences, even if they just want to save a little money at the expense of our constituents.

Fact four: nearly every State protects the right of any individual who objects on moral or religious grounds to performing abortions. So that issue is a red herring. It does not need further discussion. The States protect that right already.

Fact five: There is a domestic terrorist movement that uses violence, murder, bombings and harassment to undermine the ability of women to go to the doctor and receive constitutionally protected health care services. Many medical facilities have knuckled under to this wave of domestic terrorism and simply stopped providing those services. This bill rewards those terrorists.

Fact six: This bill is not limited to the actual performance of abortions. It would also apply to laws that require health care providers to supply women with basic information so that they can make informed decisions about their health care options, exercising their consciences. The consciences that are being violated by this bill are the consciences of women who may want to choose to avail themselves of their constitutional right to choose to have an abortion. This bill would also apply to some forms of birth control.

Let us be clear, this bill is not about religious freedom or protecting the right of conscience. That is already protected by law. This bill is simply an attempt to make it harder for women to obtain an abortion, to vital health care services. If this Congress is unable expand access to health care, the least Members can do is vote not to restrict it further.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Speaker, at least the pro-abortion forces are being very clear about what their position is. They now want to force people who disagree with their position to perform abortions, to counsel for abortions, to pay for abortion through insurance laws.

We have things in the United States called voluntary associations, and if voluntary associations want to form an insurance company that may or may not cover different things, apparently they can cover about anything, unless it is a moral view. In fact, my friend, the gentleman from New York, should know that the Catholic hospitals of the City of New York have in fact formed an HMO. There are many religious institutions in this country and many religious people who have bonded together to form health insurance of all different types.

We should have a right, those of us, regardless of what the Court says,

those of us who have a moral view that abortion is murder, should not be forced to counsel, pay for or fund that murder.

It is one thing to say we are going to deprive someone else of their human right to what I believe is to take another human life, and I believe the right to life is preeminent and I believe the Court decision was wrong, but even if you agree with that Court decision, why would you force me, who believes that the taking of these innocent little babies is an abominable sin, why would you force me to say I cannot have insurance coverage that does not pay for that?

I cannot fund a hospital or participate in caring for the poor and caring for people who need health care unless I will also fund what I find to be as abominable as the killing of innocent little babies? Why deprive me of my rights? Why deprive me of my rights of association? Why deprive those people who are not necessarily a majority, we are evenly divided in this country, but why deprive the people who believe it is morally wrong of their right to not fund it, to not counsel it?

There are alternatives. If there are all these people who favor abortion, if there are all these people who support abortion and all these abortions, there are plenty of options for them. Why make me and the people who find this abominable have to pay for this?

The reason this law is needed is in fact the courts in several States have challenged the HMO laws, the hospital laws; and we need this legislation.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I repeat, I have seen one Republican man after another Republican man after another Republican man come down to the House floor and insist that we are forcing physicians and hospitals to perform abortions that in good conscience they do not want to perform.

That is not part of the issue. That issue is solved. No one will have to perform abortions. We do not think people should have to perform abortions, doctors or hospitals, if they do not choose to. That issue is settled.

For them to continue to put up that straw man, for them to continue to use that red herring, is intellectually dishonest, and their far right, no exceptions for rape and incest, far right agenda, they know that; and they should just be a little more honest with the American public.

Now, what is wrong with this whole debate today? First of all, what is first wrong with the debate is we are talking again about a health issue that we really should not be talking about, and we are not acting on prescription drug legislation. We are doing nothing in this Congress to try to lower the cost of prescription drugs.

The second thing that is wrong with this debate is this bill is on the House floor today having bypassed the committee structure. With all the disagreements on what people think about this bill and all the interpretations, it should have been in committee. My friends on the other side of the aisle know that we should have discussed it in committees, we should have had a markup, we should have been able to figure out all these questions.

Third, my friends on the other side of the aisle always talk about States' rights, we should respect what the States do. This legislation overrides States' rights. They are for States' rights, unless they do not like what the States do, then we are going to override States' rights.

Four, as the gentleman from New York (Mr. NADLER) said, as an example, a for-profit health maintenance organization having nothing to do with religion, a for-profit health maintenance organization can simply refuse counseling services to a woman who has been a victim of rape or incest, for example, can refuse it just to save money.

Now, insurance companies, will they do that? These are the same insurance companies that cover Viagra in many, many cases, in most insurance companies; but they do not cover contraceptives for women, which is one of the biggest expenses that women of childbearing age face.

So, sure, some HMOs are going to do that. To save money, they are going to refuse counseling to a woman that might be a victim of rape or incest whose health might be in jeopardy.

Again, Mr. Speaker, there is no allowance in this legislation for rape, there is no allowance for incest, there is no allowance for protecting the life and the health of the woman. I know that fits the far right Republican agenda. They want no abortions in this country, they want no exceptions for rape, no exceptions for incest, no exceptions for the life and health of the woman. That is why this legislation is on the floor today, in order to fulfill that agenda and play to that far right base of the Republican Party.

But, frankly, where I come from, Mr. Speaker, there are differences of opinion on abortion. Some say we should allow them; some say we should not. But almost everybody I know thinks that when a woman has been a victim of rape or incest, and particularly if her life is in danger, almost everybody I know thinks that woman should be entitled to make that choice if she chooses.

That is why this legislation is a bad idea, Mr. Speaker. That is why this Congress should oppose this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the ranking member knows that we have had a hearing on this issue in committee; and as far as the consistency regarding States' rights, I dare say that both parties over the years have been far from consistent on that particular issue.

Mr. Speaker, I yield 1 minute to the gentlewoman from Maryland (Mrs. MORELLA).

(Mrs. MORELLA asked and was given permission to revise and extend her remarks.)

Mrs. MORELLA. I thank the gentleman for yielding, particularly because I am rising in opposition to this legislation.

Mr. Speaker, claims that this bill is a clarification of existing law is just incorrect. The act would be a sweeping new Federal exemption from current laws and regulations that assure women access to health services.

I think it is very important to acknowledge that no Federal law requires any health care entity to provide abortion services. Furthermore, there is no requirement that any individual participate in the provision of reproductive health services.

Currently, title X, Family Planning Programs require that clinic staff give their clients the information and referrals for all their legal options upon their request, adoption, carrying to term, abortion; and this legislation would override that existing Federal law, and it would deny pregnant women all the information that they should have about their options.

Also the opt-out for Medicaid coverage, currently the Hyde amendment to the Medicaid program stipulation that Medicaid clients must have access to those services in case of rape, incest or where the pregnancy endangers a woman's life.

Just remember, this is not a mirror of current law; this is absolutely aborting the State and Federal laws.

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Mr. BILIRAKIS. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, I just want to introduce for point of clarification, there have been statements made about how this is not an issue that should apply to health care plans or insurance companies, and I just want to state the case of Fidelis Health Care of New York. This is a Catholic archdiocese of New York cooperative managed health care plan. Immediately after it was started, Family Planning Advocates of New York, FPA they are called; they are an affiliate of Planned Parenthood International, pursued aggressive action against this HMO. They have called upon the State Health Department to ''increase its monitoring of Fidelis informational and referral processes concerning reproductive health care,'' and they are supporting legislation in the New York legislature to force them to provide abortion counseling.

So what we are talking about is we have a Catholic doctor in a Catholic hospital with a Catholic nurse, all of them are pro-life, and these people are wanting to go in there and use the force of government to say you have to do this.

Mr. BILIRAKIS. Mr. Speaker, I yield myself the remaining time.

Just to finish up, I have already quoted from the ethics portion of the American Medical Association. The American Hospital Association has stated that ''A health care institution should, based on its assessment of its mission, be able to choose whether or not to perform abortions.''

The Association of American Physicians and Surgeons says, ''The Federal Government should not discriminate against medical professionals or medical institutions that follow the dictates of conscience or medical judgment.''

The American Nurses Association: ''Where nurses are placed in situations of compromise that exceed acceptable moral limits or involve violations of the moral standards of the profession, whether in direct patient care or any other form of nursing practice, they may express their conscientious objection to participation.''

All this legislation is trying to do is be consistent with all of that, and we are giving the choice and the freedom to those who have a problem with performing these types of procedures.

Mr. PICKERING. Mr. Speaker, I come from a rural community that prides itself in its values and the ability to express those values. Our local health care providers work tirelessly to improve the quality of life and care for the small towns and communities they serve.

It is important to note that many of our rural states and rural health providers have no choice than to rely on public aid for supplying care. We must not limit their ability to serve their communities. We should give them the decision making power that will enable them to better serve their areas while protecting them from discrimination in the law.

Because I believe that it is our local communities that better understand the needs of the people, I strongly support the passage of H.R. 4691, the ''Abortion Non-Discrimination Act of 2002.''

This bill will provide the necessary protection to health care professionals as they strive to provide quality care to the people they serve.

Mr. SHUSTER. Mr. Speaker, I rise today in support of H.R. 4691, the Abortion Non-Discrimination Act. This legislation simply clarifies current law. In 1996, Congress passed and then President Clinton signed into law the existing nondiscrimination statute which protects ''health care entities'' from being forced by the government to perform abortions. The purpose of the legislation before us today is to clarify that ''health care entities'' includes all health care organizations, including hospitals.

This bill, despite all the rhetoric we hear from the other side, will not prevent women from obtaining abortions. What this bill does do is say to our hospitals and healthcare personnel that the government will not force them to perform a procedure that is in conflict with their personal moral beliefs. I think it is important to note that most hospitals in this Nation will not even get involved in abortion. That is largely due to the fact the basic function of a hospital is to preserve life not to take it.

I, like many across this Nation, believe that abortion is wrong. Life is a sacred gift from our Creator which should be protected. This, however, is not an abortion debate. This is a debate about allowing individuals to exercise their moral conscience. I cannot believe that there is a single person in this body who would say that we should force someone to perform a procedure that goes against every fiber of their moral and ethical being. It is in this vein, Mr. Chairman, that I urge passage of H.R. 4691.

Mr. FARR of California. Mr. Speaker, I would like to take this opportunity to voice my opposition to H.R. 4691, The Abortion Non-Discrimination Act, which would radically broaden the ability of any health-care entity to refuse to comply with federal, state, or local law that pertains to abortion. These health-care entities include hospitals, insurance companies, HMO's, and any other similar company; all of which would suddenly have the power to decide at will to override the existing federal provisions in Title X and Medicaid that ensure that all women have access to health information and services.

These entities would have free reign to refuse to provide or pay for abortion services, counseling regarding abortion, and referrals to other providers. In addition, hospitals would have the right to turn away women who are in need of emergency abortions as a life-saving procedure.

The State of California has worked hard to establish laws that protect the right of women to make fully informed medical choices, but H.R. 4691 would threaten these valuable laws that protect a woman's right to choose. These changes would create confusion and chaos regarding what services are available, therefore threatening the women's ability to seek and obtain health care.

The provisions encompassed in H.R. 4691 dramatically endanger women's right to quality, non-judgmental health care, and stand in direct contrast to California's efforts to protect access to information and reproductive services. I urge my fellow members to vote against this dangerous legislation.

Mr. BENTSEN. Mr. Speaker, I rise today in strong opposition to H.R. 4691, the Abortion Non-Discrimination Act. This deceptively-titled bill is not aimed at ending discrimination but rather at denying critical reproductive services to women across the nation.

This provision would allow health care entities to exempt themselves from existing state and federal laws that ensure access to a number of reproductive services vital to women's health. Supporters claim that the bill is intended to protect the religious and moral beliefs of doctors and health care providers. However, given the broadness of the bill, I must conclude that the underlying intent is to deprive patients of abortion services, coverage, and information regarding their reproductive rights.

Mr. Speaker, with this legislation, Congress risks trampling on state's rights to formulate their own Medicaid policies or use their own funding to ensure a woman's ability to make an informed decision regarding her own health. Under current law, health care providers are only required to supply abortion services to Medicaid patients in cases of rape, incest, or jeopardy of the mother's health. H.R. 4691 would undermine this narrow provision by allowing health care providers to determine what they will and will not do with federal government dollars.

Furthermore, under H.R. 4691, individual states could no longer require that a woman be referred or even advised of her options with regard to abortion and reproductive choices. If this law is passed, Title X funded entities can refuse to simply talk about abortion with patients because requiring them to do so is considered ''discrimination.'' The fact of the matter is that this law discriminates against women everywhere by denying them adequate information and the opportunity to make their own choices.

Supporters of this legislation say they want to preserve freedom of conscience, but they seek to strip from female patients their freedom of choice articulated in Roe v. Wade and the freedom of states to enact policies that ensure all women receive comprehensive information on their options.

Mr. Speaker, I urge my colleagues to vote against depriving women of crucial reproductive information; against limiting state's rights to build their own Medicaid framework; against this unacceptable legislation.

Mr. STARK. Mr. Speaker, I rise today in opposition to the misnamed Abortion Non-Discrimination Act. It should really be entitled the First Step Toward Outlawing Abortion Act. At a time when my own state of California is leading the nation in enacting the most progressive laws protecting a woman's right to choose, Republicans in Congress continue to lead their ill-conceived, extremist crusade to stamp out this fundamental freedom.

The Republicans claim that their bill is simply a clarification of existing law. They are wrong. Passage of this legislation would undermine the sensible requirement that pregnant women be given a full explanation of their medical options regarding their pregnancy. Supporters of H.R. 4961 are not trying to clarify the law today, they are trying to inch us closer and closer—through every legislative vehicle they can find—toward a time when abortions are outlawed.

If this bill becomes law, pregnant women that go to a doctor, hospital, clinic, or other health care provider opposed to abortion may well leave without a full understanding of their medical options. Not only is it wrong to deny patients a full disclosure of their medical options, it is unethical and fundamentally un-American.

If this bill becomes law, the federal government will directly interfere with every state's right to structure their Medicaid programs in the way they deem most appropriate. Current law already prohibits Medicaid programs from performing abortions except in strictly limited circumstances. This bill would go even further by overriding the ability of states to ensure that women treated by Medicaid providers are at least told of their full medical options, even if they can't get financial assistance to access those services.

If this bill becomes law, family planning clinics across the country that are funded through the Title X program would no longer be required to give a pregnant woman information about all her medical options. In fact, they could withhold such information even in cases of rape or incest where the option of an abortion may be most appropriate for the woman involved.

Existing law contains a conscience clause protection that assures that providers opposed to abortion do not have to provide them. Therefore, there is no need for this legislation.

This bill goes so far as to grant providers who are opposed to abortion the leeway to deny informing their patients of what may be a needed medical option. It's not sensible medicine, nor is it appropriate public health policy. There is absolutely no valid reason that this bill should be enacted.

I urge my colleagues to join with me in opposition to H.R. 4961 and to stand firm in our commitment that women must be provided all of the medical options so that they can make informed, personal decisions about their pregnancies.

Mr. BLUMENAUER. Mr. Speaker, I strongly oppose H.R. 4691 and urge my colleagues who care about women's health, states' rights and the legislative process to vote against this measure. Not only is the underlying bill objectionable, but the House Republican Leadership has forced this bill to the floor without any committee consideration or the possibility for amendments.

This bill puts the health and well-being of American families at risk by permitting any hospitals, health-insurance corporation or HMO to exempt itself from any federal, state, or local law that guarantees women access to abortion services. The language of this bill not only applies to the provision of legal abortion services, but also to the important responsibilities of counseling, payment and referral to other providers. Abortion is a legal medical procedure and women, regardless of whether their hospital or HMO provides actual abortion services, have a right to information about their medical options.

My anti-choice colleagues will make many false claims today on the floor, but the reality is that the federal government is not forcing hospitals or doctors to perform abortions against their will, the American public does not support this type of legislation and this bill is not a mere ''clarification'' of current law.

The bottom line is that health-care organizations should not be allowed to gag medical providers; women should not be denied necessary and appropriate medical information or services; and Congress should not supersede a state's right to create and enforce its own laws.

I will support the motion to recommit so that we can send this bill back to committee and better address its major flaws.

Mr. TIAHRT. Mr. Speaker, I rise today in strong support for H.R. 4691, the Abortion Non-Discrimination Act. This is a bill that should be strongly supported by pro-lifers and pro-choicers alike. For it simply clarifies current law to ensure that no health care provider is forced to perform abortions against its will. This body overwhelmingly supported this view in 1996 and President Clinton even signed it into law because we all agreed that those opposed to abortion on religious or moral grounds should not be forced by the government to compromise their beliefs.

This debate is not just about abortion, however, it is about health care and access to health care. If states or the federal government are allowed to discriminate against Catholic hospitals or community health centers that do not wish to provide abortion services, it will have drastic effects. Catholic hospitals and community health centers are the backbone of our health care system and serve those most in need. They already struggle financially for they treat every patient regardless of ability to pay. To withhold much needed funds just because they refuse to perform a service that they are fundamentally opposed to is abominable and will only hurt low-income Americans.

One of the fundamental principles of our nation is that the government cannot impose religious or philosophical beliefs upon its citizens. We have a rich society of different cultures and beliefs. It is un-American and unconscionable to force health care providers to perform abortions that they believe are morally wrong. Join me in voting in favor of this important legislation to ensure that no American is forced to performed abortions against their will.

Mr. TERRY, Mr. Speaker, I rise today in strong support of H.R. 4691, the Abortion Non-Discrimination Act.

In 1996, Congress enacted a law prohibiting discrimination against health care professionals, organizations, and facilities that decline to provide abortions on moral and religious grounds. This was done to prevent health care providers from being forced to act against their conscience by performing, training in, or giving referrals for abortion.

Unfortunately, several courts have misinterpreted this law by applying its protections only to individual physicians and training programs. Many hospitals and other health care facilities have been left without sufficient legal protection. For example, in 1997 the Alaska Supreme Court ordered a private hospital to provide abortion even though it went against the ethical standards set by its operating board.

H.R. 4691 would uphold the intent of Congress by clarifying the right of *all* health care providers to follow their conscience. It would also strengthen current law by ensuring providers cannot be forced to pay for abortion services. Forty-six states, including my home state of Nebraska, have similar conscience protection laws. I urge my colleagues to join me in supporting H.R. 4691 to ensure health care providers do not have to perform or pay for abortions they believe are morally wrong.

Mr. SHAYS. Mr. Speaker, I strongly oppose H.R. 4691, the inappropriately named Abortion Non-Discrimination Act, which would radically alter current law by allowing health care entities to exempt themselves from any federal, state or local law that assures women have access to abortion services, including basic information. This sort of preemption contradicts local policies espoused by this Congress.

This legislation flies in the face of a woman's right to choose as well as her basic right to be informed about her reproductive options. Moreover, H.R. 4691 has the potential to pose a severe threat to efforts to prevent unwanted pregnancies, thus leading to more, not less, abortions. The sweeping nature of this supposedly narrow legislation is staggering.

Family planning programs have been instrumental in helping millions of American women obtain reproductive health care for three decades. H.R. 4691 could essentially ''gag'' clinic staff from giving pregnant women information and referrals for all their legal options, including adoption, carrying the pregnancy to term and abortion.

There is currently no federal requirement that a health care entity provide abortion services against its will. Furthermore, there is no federal statutory requirement that any individual participate in the provision of reproductive health services if he or she objects. This legislation is therefore not only without merit but completely unnecessary.

I urge my colleagues to vote against H.R. 4691.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong opposition to H.R. 4691. This legislation, the Abortion Non-Discrimination Act of 2002, would essentially allow any health care entity, including hospitals, health insurance companies, HMOS, etc. to exempt themselves from current federal, state and local laws, that assure women have access to abortion services.

If passed, H.R. 4691 would provide a sweeping new exemption from current laws and regulations that gives the women of this country information about, and access to, reproductive health services.

This bill is specifically designed to override state constitutions, laws and local regulations that anti-choice activists have tried to overturn for years. This legislation will override the progress of states' that have worked to assure that women not only have access to reproductive services, but also the right to basic information.

By and large, the federal government does not pay for abortion services. The Hyde amendment to the Medicaid program stipulates that Medicaid clients must have access to abortion services in cases of rape, incest, or when the pregnancy endangers a woman's life. However, states may use their own Medicaid funds to cover abortion services beyond those narrow circumstances if they wish, and in fact, 21 states do so. This bill would preclude these states from enforcing their own laws and constitutional decisions in the area of abortion services for low-income women.

This bill is not limited to abortion services themselves. Under the bill, states would be prohibited from requiring that health-care entities participating in their Medicaid programs provide referrals for abortion services. It would therefore prohibit state from ensuring that patients have all the information they need to make an informed choice about their health care.

In deciding whether to approve a hospital merger, for example, a state could not even consider whether the newly merged hospital system would diminish the community's access to full reproductive health services. This would tie the hands of states trying to ensure that entire communities are not completely without any qualified abortion providers. In fact, supporters of the bill have states that this is exactly their intent.

Current law essentially requires that patients are entitled to full information about their medical options. The anti-choice movement has long sought to deny pregnant women information about their full range of options. H.R. 4691 bill accomplishes this goal by newly categorizing the Title X referral requirement as ''discrimination.''

Title X has a long-standing referral requirement that while Title X funds cannot be used to pay for abortion services, it must provide women information about the full range of medical care and reproductive options, including abortion. H.R. 4691 would override this, which will have the effect of instituting a gag on health care providers across the country.

Current law already allows individual health care providers to refrain from providing any reproductive services if they object, and that there is no federal statutory requirement that a health-care entity provide abortion services. While proponents tout this as a religious-

based ''conscience clause'' there is no actual requirement in the bill that a health-care entity demonstrate a religious objection. So in actuality, under this bill any health plan, hospital or HMO could opt out of current standards that provide women information about, and access to, abortion services for any conceivable reason.

Mr. Speaker, I urge my Colleagues to oppose this legislation. This bill would disrupt the balance between federal, state and local authority and severely jeopardize reproductive health care and women's health.

Mr. BILIRAKIS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). All time for debate has expired.

Pursuant to House Resolution 546, the bill is considered read for amendment, and the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BROWN OF OHIO

Mr. BROWN of Ohio. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. BROWN of Ohio. I am, Mr. Speaker, in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BROWN of Ohio moves to recommit the bill, H.R. 4691, to the Committee on Energy and Commerce with instructions to report the same back to the House forthwith with the following amendments:

Page 2, line 5, strike ''Section'' and insert ''(a) IN GENERAL.—Section''.

Page 2, after line 24, add the following subsection:

(b) EFFECTS ON PATIENTS AND EMPLOYEES; STATE LAW.—The amendments made by subsection (a) shall not be construed as—

(1) authorizing any institution to withhold medically appropriate information or services from a patient;

(2) authorizing any institution to prohibit its employees, contractors, or grantees from discussing or providing all medically appropriate information or services; or

(3) preempting or abrogating a State's right to enforce its constitution, laws, policies, or regulations.

Mr. BROWN of Ohio (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes in support of his motion.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

This is a motion to recommit in the purest sense of the word and in the most deserving sense of the term, and that is, Mr. Speaker, that this bill was never discussed in the Committee on Commerce to begin with. Normally, on motions to recommit after a bill goes through the process, it comes out of committee, goes to the floor, and people want to make a change or oppose it and they say, let us send it back to committee, let us recommit it so we can make some changes. But since this legislation was never there, it is even more deserving of a recommital, an affirmative vote on a recommittal motion.

The legislation we are considering today goes far beyond a so-called clarification of existing law, which permits hospitals and doctors to deny women abortion services based on that provider's religious belief. We believe that, too. Current law allows doctors and hospitals to refuse to provide services they are religiously opposed to, as they should, as the law should. But this bill, Mr. Speaker, goes much further than that. It is not about the religious beliefs of providers, it is about denying health care information and services to women, including counseling services. This bill gags doctors, it gags hospitals from referring women to family planning clinics, even those women who have been raped, even those women who are the victims of incest, and even those women whose lives and health are in danger.

Under H.R. 4691, the legislation we are discussing, insurance companies could deny coverage of family planning services, even when medically necessary, regardless of their religious beliefs. It has nothing to do with religion; it has a lot to do with an HMO's bottom line. Relevant State laws would be trumped, even though these laws are designed to protect women. In other words, Mr. Speaker, the State of California, the State of Ohio, the State of Nebraska, the State of Florida might have passed legislation to protect women; this legislation overrides what those State laws wanted to do to provide these counseling services, or to provide these referral services at the hospital or by a physician.

This bill gags doctors, it gags hospitals, regardless of religious belief. It denies women access to medically necessary services regardless of their religious beliefs. Bottom line: it compromises women's health. That is why this bill should not have been on the floor and that is why we should support the motion to recommit.

I am offering the motion to recommit to safeguard against these efforts. The motion provides that H.R. 4691 not authorize any institution to prevent its providers from providing medically appropriate information or services. It does not authorize any institution to withhold medically appropriate information or services from its patients; it does not preempt State laws from enforcing that State's Constitution or that State's laws. This motion makes no change to current law that allows doctors, nurses, and hospitals to refuse to provide abortion services if those services conflict with the doctor's or the hospital's religious beliefs. It does not affect current prohibition against providing abortion services with Federal funds, it simply limits the harm that H.R. 4691 will do.

Imagine, Mr. Speaker, as we discussed before, a woman has been raped or a woman has been a victim of incest. Her life might be in danger, she comes into a hospital. Under this legislation, that hospital simply may not provide her any information, no counseling, no referral; there is a gag on that hospital's ability to do that. Where I come from, reasonable people have differences, honest differences between when abortion should be legal. Should it be legal, should it not be legal, and in what cases should it be legal. But it is only the extreme far right, the leadership of the Republican Party that wants to pass legislation like this where there are no exceptions for rape, for incest, for the life of the woman. The great, great majority of people in this country think a woman who has been raped, who has been a victim of incest, whose life might be in danger comes into a hospital, she should be given information; she should be given counseling if she so chooses; she should be given a referral if she so chooses. This bill, this very rigid bill, inflexible bill, does not allow that. The motion to recommit is important to protect women like that. This motion to recommit is important to preserve the medical standard that guarantees women access to necessary health care.

Mr. Speaker, I ask for a ''yes'' vote on the motion to recommit.

Mr. Speaker, I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I rise to claim the time in opposition to the motion, and I yield myself such time as I may consume.

Mr. Speaker, Members should reject the motion to recommit, because it does nothing but gut the intent of the underlying bill. The bill before us, as I said earlier, is simple. No one under any circumstances should be forced to perform an abortion against their will. It would be unconscionable for us to force them to do so, but some courts are doing just that, and that is why this clarification must be made.

Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, the Brown motion states that this bill shall not be construed as authorizing any institution to withhold medically appropriate services from a patient. What are those ''services?'' They are abortion services, Mr. Speaker.

The problem with the Brown motion is it does not define medically appropriate, it leaves it up to further definition. Perhaps some Attorney General or health commissioner in a government that happens to be pro-abortion

would say that is what medically appropriate means, or NARAL might say that is what appropriate means, and we are talking about abortion. That is what is on the table here, and I hope all Members understand that.

This killer motion, will enable the killing of babies. It absolutely reverses the intent of conscience protection and undermines the very law that was passed a few years ago, and takes us further back than we are already right now. I urge Members to vote ''no'' on this gutting motion.

I want to remind Members that 86 percent of the hospitals in America do not perform abortions. Thank God for that. They protect and preserve and cherish the lives of babies and their mothers—all their patients. They would be compelled under the Brown motion, forced, coerced, or empower others the ability to force them to perform abortions.

This debate is all about conscience. The Bilirakis bill is a great bill, it is an important bill, it is a human rights bill that says conscience means something. We ought to take this step. Vote for it. Vote down this gutting motion.

Mr. BILIRAKIS. Mr. Speaker, I yield the balance of the time to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, I thank the gentleman for yielding me this time.

Let me just start out by saying, one of the things my father taught me when I was a kid growing up is when people call you names, often the case is they have a problem themselves with the name they are calling you, and we have been called extreme and radical for doing this. I really take offense at that. I believe very strongly all we are trying to do in this bill is to just clarify the intent of the Congress 6 years ago when it originally passed this conscience clause language, and it is the left, it is the pro-abortion left that is trying to do an end run through the courts around this.

Now, this motion to recommit is a classic gutting motion to recommit. It invalidates the entire intent of the bill. It has language that says the statute shall not be construed as authorizing any institution to withhold medically appropriate information or services from a patient. So in other words, we are back to square one. The original intent of the law was it covered hospitals because it referred to them as health care entities, and now we have the courts arguing that hospitals are somehow not health care entities, and they should have to provide these services or referrals.

What they are arguing for here is we have a Catholic hospital, pro-life, they hire a doctor, and the doctor gets in there and he decides he wants to start referring his patients for an abortion. If it is the position of the hospital that that violates their position, they do not want that policy in place, they can enforce it under the conscience clause that we are trying to enact under this law. They have a gutting amendment here that essentially would make it impossible for those institutions, many of which are run by the church, many of which are not run by the church; I want to just underscore this. There are a lot of hospitals that are secular and they do not want to do abortions, and yet what this amendment would effectively do is make it possible for anybody to do abortion counseling, abortion referral, even abortion procedures in hospitals that do not want to do it.

Furthermore, it goes on to say that this law will not abrogate any States rights. So essentially, if the State wants to act very aggressively, statutes that would allow abortion procedures in all hospitals in the State, that this would not be prohibited. This clearly violates the intent of many people in this body, people on both sides of this issue. We had a lot of people who are pro-life and a lot of people who are pro-choice who supported this provision.

The SPEAKER pro tempore. All time has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BROWN of Ohio. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will advise all Members that the telephone system is not working and the cloakrooms are unable to page Members. The bell systems and the whip systems will notify Members of the vote. The Chair will monitor the progress of the vote. Members are reminded that the paging system is currently not operating.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—yeas 191, nays 230, not voting 11, as follows:

[Roll No. 411]

YEAS—191

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Bass
Becerra
Bentsen
Berkley
Berman
Biggert
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frelinghuysen
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Greenwood
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kaptur
Kelly
Kennedy (RI)
Kilpatrick
Kind (WI)
Kleczka
Kolbe
Lampson
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Moore
Moran (VA)
Morella
Nadler
Napolitano
Neal
Obey
Olver
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shays
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Thomas
Thompson (CA)
Thompson (MS)
Tierney
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—230

Aderholt
Akin
Armey
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bereuter
Berry
Bilirakis
Blunt
Boehner
Bonilla
Bono
Boozman
Borski
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Costello
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kennedy (MN)
Kerns
Kildee
King (NY)
Kingston
Kirk
Knollenberg
Kucinich
LaFalce
LaHood
Langevin
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan

Moran (KS)
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Ortiz
Osborne
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shows
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—11

Bachus
Callahan
Ganske
Hilliard
Maloney (NY)
Mascara
Mink
Roukema
Stump
Thurman
Towns

□ 1425

Messrs. SAM JOHNSON of Texas, LANGEVIN, SCHAFFER, EHLERS, CHAMBLISS, KINGSTON and SWEENEY changed their vote from ''yea'' to ''nay.''

Mr. BLAGOJEVICH, Mrs. CAPPS, Mrs. JOHNSON of Connecticut, and Mr. PASCRELL changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. WOOLSEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 229, noes 189, answered ''present'' 2, not voting 12, as follows:

[Roll No. 412]

AYES—229

Aderholt
Akin
Armey
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bereuter
Berry
Biliraki
Blunt
Boehner
Bonilla
Boozman
Borski
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Gallegly
Ganske
Gekas
Gillmor
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kennedy (MN)
Kerns
Kildee
King (NY)
Kingston
Knollenberg
LaFalce
LaHood
Langevin
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Murtha
Myrick
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Ortiz
Osborne
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Shows
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stupak
Sullivan
Sununu
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—189

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Bass
Becerra
Bentsen
Berkley
Berman
Biggert
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Bono
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clyburn
Condit
Conyers
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frelinghuysen
Frost
Gephardt
Gibbons
Gilchrest
Gilman
Gonzalez
Green (TX)
Greenwood
Gutierrez
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kelly
Kennedy (RI)
Kilpatrick
Kind (WI)
Kirk
Kleczka
Kolbe
Lampson
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (CT)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, Dan
Miller, George
Moore
Moran (VA)
Morella
Nadler
Napolitano
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shays
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Sweeney
Tauscher
Thomas
Thompson (CA)
Thompson (MS)
Tierney
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

ANSWERED ''PRESENT''—2

Kaptur
Kucinich

NOT VOTING—12

Bachus
Callahan
Cubin
Maloney (NY)
Mascara
Mink
Olver
Roukema
Sherwood
Stump
Thurman
Towns

□ 1437

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. SENSENBRENNER (during consideration of House Resolution 545) submitted the following conference report and statement on the bill (H.R. 2215) to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes:

CONFERENCE REPORT (H. REPT. 107–685)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2215), to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

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

***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

*(a) SHORT TITLE.—This Act may be cited as the ''21st Century Department of Justice Appropriations Authorization Act''.*

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

*DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT*

*TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2002 AND 2003*

*Sec. 101. Specific sums authorized to be appropriated for fiscal year 2002.*

*Sec. 102. Specific sums authorized to be appropriated for fiscal year 2003.*

*Sec. 103. Appointment of additional assistant United States attorneys; reduction of certain litigation positions.*

*Sec. 104. Authorization for additional assistant United States attorneys for project safe neighborhoods.*

*TITLE II—PERMANENT ENABLING PROVISIONS*

*Sec. 201. Permanent authority.*
*Sec. 202. Permanent authority relating to enforcement of laws.*
*Sec. 203. Miscellaneous uses of funds; technical amendments.*
*Sec. 204. Technical and miscellaneous amendments to Department of Justice authorities; authority to transfer property of marginal value; recordkeeping; protection of the Attorney General.*
*Sec. 205. Oversight; waste, fraud, and abuse within the Department of Justice.*
*Sec. 206. Enforcement of Federal criminal laws by Attorney General.*
*Sec. 207. Strengthening law enforcement in United States territories, commonwealths, and possessions.*

*TITLE III—MISCELLANEOUS*

*Sec. 301. Repealers.*
*Sec. 302. Technical amendments to title 18 of the United States Code.*
*Sec. 303. Required submission of proposed authorization of appropriations for the Department of Justice for fiscal years 2004 and 2005.*
*Sec. 304. Study of untested rape examination kits.*
*Sec. 305. Reports on use of DCS 1000 (Carnivore).*
*Sec. 306. Study of allocation of litigating attorneys.*
*Sec. 307. Use of truth-in-sentencing and violent offender incarceration grants.*
*Sec. 308. Authority of the Department of Justice Inspector General.*
*Sec. 309. Review of the Department of Justice.*
*Sec. 310. Authorization of appropriations.*
*Sec. 311. Report on threats and assaults against Federal law enforcement officers, United States judges, United States officials and their families.*
*Sec. 312. Additional Federal judgeships.*

*TITLE IV—VIOLENCE AGAINST WOMEN*

*Sec. 401. Short title.*
*Sec. 402. Establishment of Violence Against Women Office.*
*Sec. 403. Effective date.*

*DIVISION B—MISCELLANEOUS DIVISION*

*TITLE I—BOYS AND GIRLS CLUBS OF AMERICA*

*Sec. 1101. Boys and Girls Clubs of America.*

*TITLE II—DRUG ABUSE EDUCATION, PREVENTION, AND TREATMENT ACT OF 2002*

*Sec. 2001. Short title.*

*Subtitle A—Drug-Free Prisons and Jails*

*Sec. 2101. Use of residential substance abuse treatment grants to provide for services during and after incarceration.*
*Sec. 2102. Jail-based substance abuse treatment programs.*
*Sec. 2103. Mandatory revocation of probation and supervised release for failing a drug test.*

*Subtitle B—Treatment and Prevention*

*Sec. 2201. Report on drug-testing technologies.*
*Sec. 2202. Drug and substance abuse treatment, prevention, education, and research study.*
*Sec. 2203. Drug abuse and addiction research.*

*Subtitle C—Drug Courts*

*Sec. 2301. Drug courts.*
*Sec. 2302. Authorization of appropriations.*
*Sec. 2303. Study by the General Accounting Office.*

*Subtitle D—Program for Successful Reentry of Criminal Offenders Into Local Communities*

*CHAPTER 1—POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES*

*Sec. 2411. Post incarceration vocational and remedial educational opportunities for inmates.*

*CHAPTER 2—STATE REENTRY GRANT PROGRAMS*

*Sec. 2421. Amendments to the Omnibus Crime Control and Safe Streets Act of 1968.*

*Subtitle E—Other Matters*

*Sec. 2501. Amendment to Controlled Substances Act.*
*Sec. 2502. Study of methamphetamine treatment.*
*Sec. 2503. Authorization of funds for DEA police training in South and Central Asia.*
*Sec. 2504. United States-Thailand drug prosecutor exchange program.*

*TITLE III—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM*

*Sec. 3001. Increasing the penalty for using physical force to tamper with witnesses, victims, or informants.*
*Sec. 3002. Correction of aberrant statutes to permit imposition of both a fine and imprisonment.*
*Sec. 3003. Reinstatement of counts dismissed pursuant to a plea agreement.*
*Sec. 3004. Appeals from certain dismissals.*
*Sec. 3005. Clarification of length of supervised release terms in controlled substance cases.*
*Sec. 3006. Authority of court to impose a sentence of probation or supervised release when reducing a sentence of imprisonment in certain cases.*
*Sec. 3007. Clarification that making restitution is a proper condition of supervised release.*

*TITLE IV—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2002*

*Sec. 4001. Short title.*
*Sec. 4002. Technical amendments relating to criminal law and procedure.*
*Sec. 4003. Additional technicals.*
*Sec. 4004. Repeal of outmoded provisions.*
*Sec. 4005. Amendments resulting from Public Law 107–56.*
*Sec. 4006. Cross reference correction.*

*TITLE V—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS*

*Sec. 5001. Paul Coverdell Forensic Sciences Improvement Grants.*
*Sec. 5002. Authorization of appropriations.*

*DIVISION C—IMPROVEMENTS TO CRIMINAL JUSTICE, CIVIL JUSTICE, IMMIGRATION, JUVENILE JUSTICE, AND INTELLECTUAL PROPERTY AND ANTITRUST LAWS*

*TITLE I—CRIMINAL JUSTICE, CIVIL JUSTICE, AND IMMIGRATION*

*Subtitle A—General Improvements*

*Sec. 11001. Law Enforcement Tribute Act.*
*Sec. 11002. Disclosure of grand jury matters relating to money laundering offenses.*
*Sec. 11003. Grant program for State and local domestic preparedness support.*
*Sec. 11004. United States Sentencing Commission access to NCIC terminal.*
*Sec. 11005. Danger pay for FBI agents.*
*Sec. 11006. Police corps.*
*Sec. 11007. Radiation exposure compensation technical amendments.*
*Sec. 11008. Federal Judiciary Protection Act of 2002.*
*Sec. 11009. James Guelff and Chris McCurley Body Armor Act of 2002.*
*Sec. 11010. Persons authorized to serve search warrant.*
*Sec. 11011. Study on reentry, mental illness, and public safety.*
*Sec. 11012. Technical amendment to Omnibus Crime Control Act.*
*Sec. 11013. Debt collection improvement.*
*Sec. 11014. SCAAP authorization.*
*Sec. 11015. Use of annuity brokers in structured settlements.*
*Sec. 11016. INS processing fees.*
*Sec. 11017. United States Parole Commission extension.*
*Sec. 11018. Waiver of foreign country residence requirement with respect to international medical graduates.*
*Sec. 11019. Pretrial disclosure of expert testimony relating to defendant's mental condition.*
*Sec. 11020. Multiparty, Multiforum Trial Jurisdiction Act of 2002.*
*Sec. 11021. Additional place of holding court in the southern district of Ohio.*
*Sec. 11022. Direct shipment of wine.*
*Sec. 11023. Webster Commission implementation report.*
*Sec. 11024. FBI police.*
*Sec. 11025. Report on FBI information management and technology.*
*Sec. 11026. GAO report on crime statistics reporting.*
*Sec. 11027. Crime-free rural States grants.*
*Sec. 11028. Motor vehicle franchise contract dispute resolution process.*
*Sec. 11029. Holding court for the southern district of Iowa.*
*Sec. 11030. Posthumous citizenship restoration.*
*Sec. 11030A. Extension of H–1B status for aliens with lengthy adjudications.*
*Sec. 11030B. Application for naturalization by alternative applicant if citizen parent has died.*

*Subtitle B—EB–5 Amendments*

*CHAPTER 1—IMMIGRATION BENEFITS*

*Sec. 11031. Removal of conditional basis of permanent resident status for certain alien entrepreneurs, spouses, and children.*
*Sec. 11032. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.*
*Sec. 11033. Regulations.*
*Sec. 11034. Definitions.*

*CHAPTER 2—AMENDMENTS TO OTHER LAWS*

*Sec. 11035. Definition of ''full-time employment''.*
*Sec. 11036. Eliminating enterprise establishment requirement for alien entrepreneurs.*
*Sec. 11037. Amendments to pilot immigration program for regional centers to promote economic growth.*

*Subtitle C—Judicial Improvements Act of 2002*

*Sec. 11041. Short title.*
*Sec. 11042. Judicial discipline procedures.*
*Sec. 11043. Technical amendments.*
*Sec. 11044. Severability.*

*Subtitle D—Antitrust Modernization Commission Act of 2002*

*Sec. 11051. Short title.*
*Sec. 11052. Establishment.*
*Sec. 11053. Duties of the Commission.*
*Sec. 11054. Membership.*
*Sec. 11055. Compensation of the Commission.*
*Sec. 11056. Staff of Commission; experts and consultants.*
*Sec. 11057. Powers of the Commission.*
*Sec. 11058. Report.*
*Sec. 11059. Termination of Commission.*
*Sec. 11060. Authorization of appropriations.*

*TITLE II—JUVENILE JUSTICE*

*Subtitle A—Juvenile Offender Accountability*

*Sec. 12101. Short title.*
*Sec. 12102. Juvenile offender accountability.*

*Subtitle B—Juvenile Justice and Delinquency Prevention Act of 2002*

*Sec. 12201. Short title.*

*Sec. 12202. Findings.*
*Sec. 12203. Purpose.*
*Sec. 12204. Definitions.*
*Sec. 12205. Concentration of Federal effort.*
*Sec. 12206. Coordinating Council on Juvenile Justice and Delinquency Prevention.*
*Sec. 12207. Annual report.*
*Sec. 12208. Allocation.*
*Sec. 12209. State plans.*
*Sec. 12210. Juvenile delinquency prevention block grant program.*
*Sec. 12211. Research; evaluation; technical assistance; training.*
*Sec. 12212. Demonstration projects.*
*Sec. 12213. Authorization of appropriations.*
*Sec. 12214. Administrative authority.*
*Sec. 12215. Use of funds.*
*Sec. 12216. Limitations on use of funds.*
*Sec. 12217. Rules of construction.*
*Sec. 12218. Leasing surplus Federal property.*
*Sec. 12219. Issuance of rules.*
*Sec. 12220. Content of materials.*
*Sec. 12221. Technical and conforming amendments.*
*Sec. 12222. Incentive grants for local delinquency prevention programs.*
*Sec. 12223. Effective date; application of amendments.*

*Subtitle C—Juvenile Disposition Hearing*

*Sec. 12301. Juvenile disposition hearing.*

*TITLE III—INTELLECTUAL PROPERTY*

*Subtitle A—Patent and Trademark Office Authorization*

*Sec. 13101. Short title.*
*Sec. 13102. Authorization of amounts available to the Patent and Trademark Office.*
*Sec. 13103. Electronic filing and processing of patent and trademark applications.*
*Sec. 13104. Strategic plan.*
*Sec. 13105. Determination of substantial new question of patentability in reexamination proceedings.*
*Sec. 13106. Appeals in inter partes reexamination proceedings.*

*Subtitle B—Intellectual Property and High Technology Technical Amendments*

*Sec. 13201. Short title.*
*Sec. 13202. Clarification of Reexamination Procedure Act of 1999; technical amendments.*
*Sec. 13203. Patent and Trademark Efficiency Act amendments.*
*Sec. 13204. Domestic publication of foreign filed Patent Applications Act of 1999 amendments.*
*Sec. 13205. Domestic publication of patent applications published abroad.*
*Sec. 13206. Miscellaneous clerical amendments.*
*Sec. 13207. Technical corrections in trademark law.*
*Sec. 13208. Patent and trademark fee clerical amendment.*
*Sec. 13209. Copyright related corrections to 1999 Omnibus Reform Act.*
*Sec. 13210. Amendments to title 17, United States Code.*
*Sec. 13211. Other copyright related technical amendments.*

*Subtitle C—Educational Use Copyright Exemption*

*Sec. 13301. Educational use copyright exemption.*

*Subtitle D—Madrid Protocol Implementation*

*Sec. 13401. Short title.*
*Sec. 13402. Provisions to implement the protocol relating to the Madrid Agreement concerning the international registration of marks.*
*Sec. 13403. Effective date.*

*TITLE IV—ANTITRUST TECHNICAL CORRECTIONS ACT OF 2002*

*Sec. 14101. Short title.*
*Sec. 14102. Amendments.*
*Sec. 14103. Effective date; application of amendments.*

***DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT***

***TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2002 AND 2003***

***SEC. 101. SPECIFIC SUMS AUTHORIZED TO BE APPROPRIATED FOR FISCAL YEAR 2002.***

*There are authorized to be appropriated for fiscal year 2002, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:*

*(1) GENERAL ADMINISTRATION.—For General Administration: $92,668,000.*

*(2) ADMINISTRATIVE REVIEW AND APPEALS.—For Administrative Review and Appeals: $173,647,000 for administration of pardon and clemency petitions and for immigration-related activities.*

*(3) OFFICE OF INSPECTOR GENERAL.—For the Office of Inspector General: $50,735,000, which shall include for each such fiscal year, not to exceed $10,000 to meet unforeseen emergencies of a confidential character.*

*(4) GENERAL LEGAL ACTIVITIES.—For General Legal Activities: $549,176,000, which shall include for each such fiscal year—*

*(A) not less than $4,000,000 for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals; and*

*(B) not to exceed $20,000 to meet unforeseen emergencies of a confidential character.*

*(5) ANTITRUST DIVISION.—For the Antitrust Division: $130,791,000.*

*(6) UNITED STATES ATTORNEYS.—For United States Attorneys: $1,353,968,000, which shall include not less than $10,000,000 for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147): Provided, That such amounts in the appropriations account ''General Legal Services'' as may be expended for such investigations or prosecutions shall count towards this minimum as though expended from this appropriations account.*

*(7) FEDERAL BUREAU OF INVESTIGATION.—For the Federal Bureau of Investigation: $3,524,864,000, which shall include for each such fiscal year—*

*(A) not to exceed $33,791,000 for construction, to remain available until expended; and*

*(B) not to exceed $70,000 to meet unforeseen emergencies of a confidential character.*

*(8) UNITED STATES MARSHALS SERVICE.—For the United States Marshals Service: $648,696,000, which shall include for each such fiscal year not to exceed $15,000,000 for construction, to remain available until expended.*

*(9) FEDERAL PRISON SYSTEM.—For the Federal Prison System, including the National Institute of Corrections: $4,622,152,000.*

*(10) FEDERAL PRISONER DETENTION.—For the support of United States prisoners in non-Federal institutions, as authorized by section 4013(a) of title 18 of the United States Code: $706,182,000, to remain available until expended.*

*(11) DRUG ENFORCEMENT ADMINISTRATION.—For the Drug Enforcement Administration: $1,481,783,000, which shall include not to exceed $70,000 to meet unforeseen emergencies of a confidential character.*

*(12) IMMIGRATION AND NATURALIZATION SERVICE.—For the Immigration and Naturalization Service: $3,499,854,000, which shall include—*

*(A) not to exceed $2,739,695,000 for salaries and expenses of enforcement and border affairs (i.e., the Border Patrol, deportation, intelligence, investigations, and inspection programs, and the detention program);*

*(B) not to exceed $631,745,000 for salaries and expenses of citizenship and benefits (i.e., programs not included under subparagraph (A));*

*(C) for each such fiscal year, not to exceed $128,454,000 for construction, to remain available until expended; and*

*(D) not to exceed $50,000 to meet unforeseen emergencies of a confidential character.*

*(13) FEES AND EXPENSES OF WITNESSES.—For Fees and Expenses of Witnesses: $156,145,000 to remain available until expended, which shall include for each such fiscal year not to exceed $6,000,000 for construction of protected witness safesites.*

*(14) INTERAGENCY CRIME AND DRUG ENFORCEMENT.—For Interagency Crime and Drug Enforcement: $338,577,000, for expenses not otherwise provided for, for the investigation and prosecution of persons involved in organized crime drug trafficking, except that any funds obligated from appropriations authorized by this paragraph may be used under authorities available to the organizations reimbursed from such funds.*

*(15) FOREIGN CLAIMS SETTLEMENT COMMISSION.—For the Foreign Claims Settlement Commission: $1,136,000.*

*(16) COMMUNITY RELATIONS SERVICE.—For the Community Relations Service: $9,269,000.*

*(17) ASSETS FORFEITURE FUND.—For the Assets Forfeiture Fund: $22,949,000 for expenses authorized by section 524 of title 28, United States Code.*

*(18) UNITED STATES PAROLE COMMISSION.—For the United States Parole Commission: $9,876,000.*

*(19) FEDERAL DETENTION TRUSTEE.—For the necessary expenses of the Federal Detention Trustee: $1,000,000.*

*(20) JOINT AUTOMATED BOOKING SYSTEM.—For expenses necessary for the operation of the Joint Automated Booking System: $1,000,000.*

*(21) NARROWBAND COMMUNICATIONS.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems: $94,615,000.*

*(22) RADIATION EXPOSURE COMPENSATION.—For administrative expenses in accordance with the Radiation Exposure Compensation Act: such sums as necessary.*

*(23) COUNTERTERRORISM FUND.—For the Counterterrorism Fund for necessary expenses, as determined by the Attorney General: $4,989,000.*

*(24) OFFICE OF JUSTICE PROGRAMS.—For administrative expenses not otherwise provided for, of the Office of Justice Programs: $132,862,000.*

***SEC. 102. SPECIFIC SUMS AUTHORIZED TO BE APPROPRIATED FOR FISCAL YEAR 2003.***

*There are authorized to be appropriated for fiscal year 2003, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:*

*(1) GENERAL ADMINISTRATION.—For General Administration: $121,079,000.*

*(2) ADMINISTRATIVE REVIEW AND APPEALS.—For Administrative Review and Appeals: $198,869,000 for administration of pardon and clemency petitions and for immigration-related activities.*

*(3) OFFICE OF INSPECTOR GENERAL.—For the Office of Inspector General: $66,288,000, which shall include for each such fiscal year, not to exceed $10,000 to meet unforeseen emergencies of a confidential character.*

*(4) GENERAL LEGAL ACTIVITIES.—For General Legal Activities: $659,181,000, which shall include for each such fiscal year—*

*(A) not less than $4,000,000 for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals; and*

*(B) not to exceed $20,000 to meet unforeseen emergencies of a confidential character.*

*(5) ANTITRUST DIVISION.—For the Antitrust Division: $141,855,000.*

*(6) UNITED STATES ATTORNEYS.—For United States Attorneys: $1,550,948,000, which shall include not less than $10,000,000 for the investigation and prosecution of intellectual property*

*crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147):Provided, That such amounts in the appropriations account ''General Legal Services'' as may be expended for such investigations or prosecutions shall count towards this minimum as though expended from this appropriations account.*

*(7) FEDERAL BUREAU OF INVESTIGATION.—For the Federal Bureau of Investigation: $4,323,912,000, which shall include for each such fiscal year—*

*(A) not to exceed $1,250,000 for construction, to remain available until expended; and*

*(B) not to exceed $70,000 to meet unforeseen emergencies of a confidential character.*

*(8) UNITED STATES MARSHALS SERVICE.—For the United States Marshals Service: $737,346,000, which shall include for each such fiscal year not to exceed $15,153,000 for construction, to remain available until expended.*

*(9) FEDERAL PRISON SYSTEM.—For the Federal Prison System, including the National Institute of Corrections: $4,605,068,000.*

*(10) DRUG ENFORCEMENT ADMINISTRATION.—For the Drug Enforcement Administration: $1,582,044,000, which shall include not to exceed $70,000 to meet unforeseen emergencies of a confidential character.*

*(11) IMMIGRATION AND NATURALIZATION SERVICE.—For the Immigration and Naturalization Service: $4,131,811,000, which shall include—*

*(A) not to exceed $3,253,561,000 for salaries and expenses of Border Patrol, detention and removals, intelligence, investigations, inspections, and international enforcement, including not to exceed $50,000 to meet unforeseen emergencies of a confidential character;*

*(B) not to exceed $88,598,000 for salaries and expenses of immigration services, including international services; and*

*(C) not to exceed $789,652,000 for salaries and expenses for support and administration (i.e., data and communications, information and records management, construction, etc.).*

*(12) FEES AND EXPENSES OF WITNESSES.—For Fees and Expenses of Witnesses: $156,145,000 to remain available until expended, which shall include for each such fiscal year not to exceed $6,000,000 for construction of protected witness safesites.*

*(13) INTERAGENCY CRIME AND DRUG ENFORCEMENT.—For Interagency Crime and Drug Enforcement: $362,131,000, for expenses not otherwise provided for, for the investigation and prosecution of persons involved in organized crime drug trafficking, except that any funds obligated from appropriations authorized by this paragraph may be used under authorities available to the organizations reimbursed from such funds.*

*(14) FOREIGN CLAIMS SETTLEMENT COMMISSION.—For the Foreign Claims Settlement Commission: $1,194,000.*

*(15) COMMUNITY RELATIONS SERVICE.—For the Community Relations Service: $10,732,000.*

*(16) ASSETS FORFEITURE FUND.—For the Assets Forfeiture Fund: $22,949,000 for expenses authorized by section 524 of title 28, United States Code.*

*(17) UNITED STATES PAROLE COMMISSION.—For the United States Parole Commission: $11,355,000.*

*(18) FEDERAL DETENTION TRUSTEE.—For the necessary expenses of the Federal Detention Trustee: $1,388,583,000.*

*(19) IDENTIFICATION SYSTEM INTEGRATION.—For expenses necessary for the operation of the Identification System Integration: $24,505,000.*

*(20) NARROWBAND COMMUNICATIONS.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems: $149,292,000.*

*(21) RADIATION EXPOSURE COMPENSATION.—For administrative expenses in accordance with the Radiation Exposure Compensation Act: such sums as necessary.*

*(22) COUNTERTERRORISM FUND.—For the Counterterrorism Fund for necessary expenses, as determined by the Attorney General: $35,000,000.*

*(23) OFFICE OF JUSTICE PROGRAMS.—For administrative expenses not otherwise provided for, of the Office of Justice Programs: $215,811,000.*

*(24) LEGAL ACTIVITIES OFFICE.—For necessary expenses related to office automation: $15,942,000.*

***SEC. 103. APPOINTMENT OF ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS; REDUCTION OF CERTAIN LITIGATION POSITIONS.***

*(a) APPOINTMENTS.—Not later than September 30, 2003, the Attorney General may exercise authority under section 542 of title 28, United States Code, to appoint 200 assistant United States attorneys in addition to the number of assistant United States attorneys serving on the date of the enactment of this Act.*

*(b) SELECTION OF APPOINTEES.—Individuals first appointed under subsection (a) shall be appointed from among attorneys who are incumbents of 200 full-time litigation positions in divisions of the Department of Justice and whose official duty station is at the seat of Government.*

*(c) TERMINATION OF POSITIONS.—Each of the 200 litigation positions that become vacant by reason of an appointment made in accordance with subsections (a) and (b) shall be terminated at the time the vacancy arises.*

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

***SEC. 104. AUTHORIZATION FOR ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS FOR PROJECT SAFE NEIGHBORHOODS.***

*(a) IN GENERAL.—The Attorney General shall establish a program for each United States Attorney to provide for coordination with State and local law enforcement officials in the identification and prosecution of violations of Federal firearms laws including school gun violence and juvenile gun offenses.*

*(b) AUTHORIZATION FOR HIRING 94 ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS.—There are authorized to be appropriated to carry out this section $9,000,000 for fiscal year 2002 to hire an additional Assistant United States Attorney in each United States Attorney Office.*

## *TITLE II—PERMANENT ENABLING PROVISIONS*

***SEC. 201. PERMANENT AUTHORITY.***

*(a) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by adding at the end the following:*

***''§ 530C. Authority to use available funds***

*''(a) IN GENERAL.—Except to the extent provided otherwise by law, the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) may, in the reasonable discretion of the Attorney General, be carried out through any means, including—*

*''(1) through the Department's own personnel, acting within, from, or through the Department itself;*

*''(2) by sending or receiving details of personnel to other branches or agencies of the Federal Government, on a reimbursable, partially-reimbursable, or nonreimbursable basis;*

*''(3) through reimbursable agreements with other Federal agencies for work, materials, or equipment;*

*''(4) through contracts, grants, or cooperative agreements with non-Federal parties; and*

*''(5) as provided in subsection (b), in section 524, and in any other provision of law consistent herewith, including, without limitation, section 102(b) of Public Law 102–395 (106 Stat. 1838), as incorporated by section 815(d) of Public Law 104–132 (110 Stat. 1315).*

*''(b) PERMITTED USES.—*

*''(1) GENERAL PERMITTED USES.—Funds available to the Attorney General (i.e., all funds available to carry out the activities described in subsection (a)) may be used, without limitation, for the following:*

*''(A) The purchase, lease, maintenance, and operation of passenger motor vehicles, or police-type motor vehicles for law enforcement purposes, without regard to general purchase price limitation for the then-current fiscal year.*

*''(B) The purchase of insurance for motor vehicles, boats, and aircraft operated in official Government business in foreign countries.*

*''(C) Services of experts and consultants, including private counsel, as authorized by section 3109 of title 5, and at rates of pay for individuals not to exceed the maximum daily rate payable from time to time under section 5332 of title 5.*

*''(D) Official reception and representation expenses (i.e., official expenses of a social nature intended in whole or in predominant part to promote goodwill toward the Department or its missions, but excluding expenses of public tours of facilities of the Department of Justice), in accordance with distributions and procedures established, and rules issued, by the Attorney General, and expenses of public tours of facilities of the Department of Justice.*

*''(E) Unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General.*

*''(F) Miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration.*

*''(G) In accordance with procedures established and rules issued by the Attorney General—*

*''(i) attendance at meetings and seminars;*

*''(ii) conferences and training; and*

*''(iii) advances of public moneys under section 3324 of title 31: Provided, That travel advances of such moneys to law enforcement personnel engaged in undercover activity shall be considered to be public money for purposes of section 3527 of title 31.*

*''(H) Contracting with individuals for personal services abroad, except that such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.*

*''(I) Payment of interpreters and translators who are not citizens of the United States, in accordance with procedures established and rules issued by the Attorney General.*

*''(J) Expenses or allowances for uniforms as authorized by section 5901 of title 5, but without regard to the general purchase price limitation for the then-current fiscal year.*

*''(K) Expenses of—*

*''(i) primary and secondary schooling for dependents of personnel stationed outside the United States at cost not in excess of those authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the locality are unable to provide adequately for the education of such dependents; and*

*''(ii) transportation of those dependents between their place of residence and schools serving the area which those dependents would normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.*

*''(L) payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: Provided, That—*

*''(i) no such reward shall exceed $2,000,000, unless—*

*''(I) the reward is to combat domestic terrorism or international terrorism (as defined in section 2331 of title 18); or*

''(II) a statute should authorize a higher amount;

''(ii) no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

''(iii) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii);

''(iv) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and

''(v) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

''(2) SPECIFIC PERMITTED USES.—

''(A) AIRCRAFT AND BOATS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

''(B) PURCHASE OF AMMUNITION AND FIREARMS; FIREARMS COMPETITIONS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Drug Enforcement Administration, for the Federal Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for—

''(i) the purchase of ammunition and firearms; and

''(ii) participation in firearms competitions.

''(C) CONSTRUCTION.—Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, activating, renovating, converting, expanding, extending, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident or related thereto; but the foregoing shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

''(3) FEES AND EXPENSES OF WITNESSES.—Funds available to the Attorney General for fees and expenses of witnesses may be used for—

''(A) expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses (including advances of public money) and as authorized by section 1821 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day;

''(B) fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and

''(C) construction of protected witness safesites.

''(4) FEDERAL BUREAU OF INVESTIGATION.—Funds available to the Attorney General for the Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.

''(5) IMMIGRATION AND NATURALIZATION SERVICE.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—

''(A) acquisition of land as sites for enforcement fences, and construction incident to such fences;

''(B) cash advances to aliens for meals and lodging en route;

''(C) refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; and

''(D) expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

''(6) FEDERAL PRISON SYSTEM.—Funds available to the Attorney General for the Federal Prison System may be used for—

''(A) inmate medical services and inmate legal services, within the Federal prison system;

''(B) the purchase and exchange of farm products and livestock;

''(C) the acquisition of land as provided in section 4010 of title 18; and

''(D) the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States prisoners for their work performed in any such construction;

except that no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity.

''(7) DETENTION TRUSTEE.—Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the overseeing of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of detention functions, and the direction of the United States Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.

''(c) RELATED PROVISIONS.—

''(1) LIMITATION OF COMPENSATION OF INDIVIDUALS EMPLOYED AS ATTORNEYS.—No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.

''(2) REIMBURSEMENTS PAID TO GOVERNMENTAL ENTITIES.—Funds available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another Federal entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.

''(d) FOREIGN REIMBURSEMENTS.—Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or services with a friendly foreign country on a cost-sharing basis, any reimbursements or contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Justice or any component. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

''(e) RAILROAD POLICE TRAINING FEES.—The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in a Federal Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account 'Federal Bureau of Investigation, Salaries and Expenses', to be available until expended for salaries and expenses incurred in providing such services.

''(f) WARRANTY WORK.—In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for equipment under warranty, the Attorney General is authorized to seek reimbursement from such entities for warranty work performed at Department of Justice facilities, and to credit any payment made for such work to any appropriation charged therefor.''.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 31 of title 28, United States Code, is amended by adding at the end the following:

''530C. Authority to use available funds.''.

**SEC. 202. PERMANENT AUTHORITY RELATING TO ENFORCEMENT OF LAWS.**

(a) IN GENERAL.—Chapter 31 of title 28, United States Code (as amended by section 201), is amended by adding at the end the following:

**''§ 530D. Report on enforcement of laws**

''(a) REPORT.—

''(1) IN GENERAL.—The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

''(A) establishes or implements a formal or informal policy to refrain—

''(i) from enforcing, applying, or administering any provision of any Federal statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

''(ii) within any judicial jurisdiction of or within the United States, from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer;

''(B) determines—

''(i) to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law; or

''(ii) to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

''(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

''(i) against the United States (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, $2,000,000, excluding prejudgment interest; or

''(ii) by the United States (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: Provided, That for purposes of this clause, the term ''injunctive or other nonmonetary relief'' shall not be understood to include the following, where the same are a matter of public record—

''(I) debarments, suspensions, or other exclusions from Government contracts or grants;

''(II) mere reporting requirements or agreements (including sanctions for failure to report);

''(III) requirements or agreements merely to comply with statutes or regulations;

''(IV) requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries;

''(V) any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

''(VI) agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

''(2) SUBMISSION OF REPORT TO THE CONGRESS.—For the purposes of paragraph (1), a report shall be considered to be submitted to the Congress if the report is submitted to—

''(A) the majority leader and minority leader of the Senate;

''(B) the Speaker, majority leader, and minority leader of the House of Representatives;

''(C) the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

''(D) the Senate Legal Counsel and the General Counsel of the House of Representatives.

''(b) DEADLINE.—A report shall be submitted—

''(1) under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

''(2) under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

''(3) under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.

''(c) CONTENTS.—A report required by subsection (a) shall—

''(1) specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

''(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

''(A) such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product-, or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, or other law or any court order if the fact of each such omission (and the precise ground or grounds therefor) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

''(B) the requirements of this paragraph shall be deemed satisfied—

''(i) in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

''(ii) in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

''(3) in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indicate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

''(d) DECLARATION.—In the case of a determination described in subsection (a)(1)(B), the representative of the United States participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision involved is the position of the executive branch of the Federal Government (or, as applicable, of the President or of any executive agency or military department).

''(e) APPLICABILITY TO THE PRESIDENT AND TO EXECUTIVE AGENCIES AND MILITARY DEPARTMENTS.—The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President (but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order), to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 31 of title 28, United States Code (as amended by section 201), is amended by adding at the end the following:

''530D. Report on enforcement of laws.''.

(2) Section 712 of Public Law 95–521 (92 Stat. 1883) is amended by striking subsection (b) and inserting:

''(b) The Attorney General shall notify Counsel as required by section 530D of title 28.''.

(3) Not later than 30 days after the date of the enactment of this Act, the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) of the enactment of this section.

(4)(A) Not later than 90 days after the date of the enactment of this Act, the Attorney General (and, as applicable, the President, and the head of any executive agency or military department described in subsection (e) of section 530D of title 28, United States Code, as added by subsection (a)) shall submit to Congress a report (in accordance with subsections (a), (c), and (e) of such section) on—

(i) all policies of which the Attorney General and applicable official are aware described in subsection (a)(1)(A) of such section that were established or implemented before the date of the enactment of this Act and were in effect on such date; and

(ii) all determinations of which the Attorney General and applicable official are aware described in subsection (a)(1)(B) of such section that were made before the date of the enactment of this Act and were in effect on such date.

(B) If a determination described in subparagraph (A)(ii) relates to any judicial, administrative, or other proceeding that is pending in the 90-day period beginning on the date of the enactment of this Act, with respect to any such determination, then the report required by this paragraph shall be submitted within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but not later than 30 days after the date of the enactment of this Act.

(5) Section 101 of Public Law 106–57 (113 Stat. 414) is amended by striking subsection (b).

**SEC. 203. MISCELLANEOUS USES OF FUNDS; TECHNICAL AMENDMENTS.**

(a) BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) in section 504(a) by striking ''502'' and inserting ''501(b)'';

(2) in section 506(a)(1) by striking ''participating'';

(3) in section 510(a)(3) by striking ''502'' and inserting ''501(b)'';

(4) in section 510 by adding at the end the following:

''(d) No grants or contracts under subsection (b) may be made, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal or juvenile justice, or delinquency prevention.''; and

(5) in section 511 by striking ''503'' and inserting ''501(b)''.

(b) ATTORNEYS SPECIALLY RETAINED BY THE ATTORNEY GENERAL.—The 3d sentence of section 515(b) of title 28, United States Code, is amended by striking ''at not more than $12,000''.

**SEC. 204. TECHNICAL AND MISCELLANEOUS AMENDMENTS TO DEPARTMENT OF JUSTICE AUTHORITIES; AUTHORITY TO TRANSFER PROPERTY OF MARGINAL VALUE; RECORDKEEPING; PROTECTION OF THE ATTORNEY GENERAL.**

(a) Section 524 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting ''to the Attorney General'' after ''available'';

(2) in subsection (c)(1)—

(A) by striking the semicolon at the end of the 1st subparagraph (I) and inserting a period;

(B) by striking the 2d subparagraph (I);

(C) by striking ''(A)(iv), (B), (F), (G), and (H)'' in the first sentence following the second subparagraph (I) and inserting ''(B), (F), and (G)''; and

(D) by striking ''fund'' in the 3d sentence following the 2d subparagraph (I) and inserting ''Fund'';

(3) in subsection (c)(2)—

(A) by inserting before the period in the last sentence '', without both the personal approval of the Attorney General and written notice within 30 days thereof to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives'';

(B) by striking ''for information'' each place it appears; and

(C) by striking ''$250,000'' the 2d and 3d places it appears and inserting ''$500,000'';

(4) in subsection (c)(3) by striking ''(F)'' and inserting ''(G)'';

(5) in subsection (c)(5) by striking ''Fund which'' and inserting ''Fund, that'';

(6) in subsection (c)(8)(A), by striking ''(A)(iv), (B), (F), (G), and (H)'' and inserting ''(B), (F), and (G)''; and

(7) in subsection (c)(9)(B)—

(A) by striking ''year 1997'' and inserting ''years 2002 and 2003''; and

(B) by striking ''Such transfer shall not'' and inserting ''Each such transfer shall be subject to satisfaction by the recipient involved of any outstanding lien against the property transferred, but no such transfer shall''.

(b) Section 522 of title 28, United States Code, is amended by inserting ''(a)'' before ''The'', and by inserting at the end the following:

''(b) With respect to any data, records, or other information acquired, collected, classified, preserved, or published by the Attorney General for any statistical, research, or other aggregate reporting purpose beginning not later than 1 year after the date of enactment of 21st Century Department of Justice Appropriations Authorization Act and continuing thereafter, and notwithstanding any other provision of law, the

*same criteria shall be used (and shall be required to be used, as applicable) to classify or categorize offenders and victims (in the criminal context), and to classify or categorize actors and acted upon (in the noncriminal context).''.*

*(c) Section 534(a)(3) of title 28, United States Code, is amended by adding ''and'' after the semicolon.*

*(d) Section 509(3) of title 28, United States Code, is amended by striking the 2d period.*

*(e) Section 533 of title 28, United States Code, is amended—*

*(1) by redesignating paragraph (3) as paragraph (4); and*

*(2) by adding after paragraph (2) a new paragraph as follows:*

*''(3) to assist in the protection of the person of the Attorney General.''.*

*(f) No compensation or reimbursement paid pursuant to section 501(a) of Public Law 99–603 (100 Stat. 3443) or section 241(i) of the Act of June 27, 1952 (ch. 477) shall be subject to section 6503(d) of title 31, United States Code, and no funds available to the Attorney General may be used to pay any assessment made pursuant to such section 6503 with respect to any such compensation or reimbursement.*

*(g) Section 108 of Public Law 103–121 (107 Stat. 1164) is amended by replacing ''three'' with ''six'', by replacing ''only'' with '', first,'', and by replacing ''litigation.'' with ''litigation, and, thereafter, for financial systems, and other personnel, administrative, and litigation expenses of debt collection activities.''.*

***SEC. 205. OVERSIGHT; WASTE, FRAUD, AND ABUSE WITHIN THE DEPARTMENT OF JUSTICE.***

*(a) Section 529 of title 28, United States Code, is amended by inserting ''(a)'' before ''Beginning'', and by adding at the end the following:*

*''(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than May 2, 2003, and of every year thereafter, prepare and provide to the Committees on the Judiciary and Appropriations of each House of the Congress using funds available for the underlying programs—*

*''(1) a report identifying and describing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or, for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services), and including, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, the names of each unsuccessful applicant or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and*

*''(2) a report identifying and reviewing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract over $5,000,000 made, entered into, awarded, or for which additional or supplemental funds were provided, after October 1, 2002, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services) that was programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year (or even if not yet closed out, was terminated or otherwise ended in the fiscal year that ended 2 years before the end of such immediately preceding fiscal year), and including, without limitation, for each such grant, cooperative agreement, or contract: a description of how the appropriated funds involved actually were spent, statistics relating to its performance, its specific purpose or purposes, and its effectiveness, and a written declaration by each non-Federal grantee and each non-Federal party to such agreement or to such contract, that—*

*''(A) the appropriated funds were spent for such purpose or purposes, and only such purpose or purposes;*

*''(B) the terms of the grant, cooperative agreement, or contract were complied with; and*

*''(C) all documentation necessary for conducting a full and proper audit under generally accepted accounting principles, and any (additional) documentation that may have been required under the grant, cooperative agreement, or contract, have been kept in orderly fashion and will be preserved for not less than 3 years from the date of such close out, termination, or end;*

*except that the requirement of this paragraph shall be deemed satisfied with respect to any such description, statistics, or declaration if such non-Federal grantee or such non-Federal party shall have failed to provide the same to the Attorney General, and the Attorney General notes the fact of such failure and the name of such grantee or such party in the report.''.*

*(b) Section 1913 of title 18, United States Code, is amended by striking ''to favor'' and inserting ''a jurisdiction, or an official of any government, to favor, adopt,'', by inserting '', law, ratification, policy,'' after ''legislation'' every place it appears, by striking ''by Congress'' the 2d place it appears, by inserting ''or such official'' before '', through the proper'', by inserting '', measure,'' before ''or resolution'', by striking ''Members of Congress on the request of any Member'' and inserting ''any such Member or official, at his request,'', by striking ''for legislation'' and inserting ''for any legislation'', and by striking the period and the paragraph following ''business'' and inserting '', or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counterintelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.''.*

*(c) Section 1516(a) of title 18, United States Code, is amended by inserting '', entity, or program'' after ''person'', and by inserting ''grant, or cooperative agreement,'' after ''subcontract,''.*

*(d) Section 112 of title I of section 101(b) of division A of Public Law 105–277 (112 Stat. 2681–67) is amended by striking ''fiscal year'' and all that follows through ''Justice—'', and inserting ''any fiscal year the Attorney General—''.*

*(e) Section 2320(f) of title 18, United States Code, is amended—*

*(1) by striking ''title 18'' each place it appears and inserting ''this title''; and*

*(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;*

*(3) by inserting ''(1)'' after ''(f)''; and*

*(4) by adding at the end the following:*

*''(2)(A) The report under paragraph (1), with respect to criminal infringement of copyright, shall include the following:*

*''(i) The number of infringement cases in these categories: audiovisual (videos and films); audio (sound recordings); literary works (books and musical compositions); computer programs; video games; and, others.*

*''(ii) The number of online infringement cases.*

*''(iii) The number and dollar amounts of fines assessed in specific categories of dollar amounts. These categories shall be: no fines ordered; fines under $500; fines from $500 to $1,000; fines from $1,000 to $5,000; fines from $5,000 to $10,000; and fines over $10,000.*

*''(iv) The total amount of restitution ordered in all copyright infringement cases.*

*''(B) In this paragraph, the term 'online infringement cases' as used in paragraph (2) means those cases where the infringer—*

*''(i) advertised or publicized the infringing work on the Internet; or*

*''(ii) made the infringing work available on the Internet for download, reproduction, performance, or distribution by other persons.*

*''(C) The information required under subparagraph (A) shall be submitted in the report required in fiscal year 2005 and thereafter.''.*

***SEC. 206. ENFORCEMENT OF FEDERAL CRIMINAL LAWS BY ATTORNEY GENERAL.***

*Section 535 of title 28, United States Code, is amended in subsections (a) and (b), by replacing ''title 18'' with ''Federal criminal law'', and in subsection (b), by replacing ''or complaint'' with ''matter, or complaint witnessed, discovered, or'', and by inserting ''or the witness, discoverer, or recipient, as appropriate,'' after ''agency,''.*

***SEC. 207. STRENGTHENING LAW ENFORCEMENT IN UNITED STATES TERRITORIES, COMMONWEALTHS, AND POSSESSIONS.***

*(a) EXTENDED ASSIGNMENT INCENTIVE.—Chapter 57 of title 5, United States Code, is amended—*

*(1) in subchapter IV, by inserting at the end the following:*

***''§ 5757. Extended assignment incentive***

*''(a) The head of an Executive agency may pay an extended assignment incentive to an employee if—*

*''(1) the employee has completed at least 2 years of continuous service in 1 or more civil service positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands;*

*''(2) the agency determines that replacing the employee with another employee possessing the required qualifications and experience would be difficult; and*

*''(3) the agency determines it is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in the territory or possession, the Commonwealth of Puerto Rico or Commonwealth of the Northern Mariana Islands, except that the total amount of service performed in a particular territory, commonwealth, or possession under 1 or more agreements established under this section may not exceed 5 years.*

*''(b) The sum of extended assignment incentive payments for a service period may not exceed the greater of—*

*''(1) an amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period, times the number of years in the service period; or*

*''(2) $15,000 per year in the service period.*

*''(c)(1) Payment of an extended assignment incentive shall be contingent upon the employee entering into a written agreement with the agency specifying the period of service and other terms and conditions under which the extended assignment incentive is payable.*

*''(2) The agreement shall set forth the method of payment, including any use of an initial lump-sum payment, installment payments, or a final lump-sum payment upon completion of the entire period of service.*

*''(3) The agreement shall describe the conditions under which the extended assignment incentive may be canceled prior to the completion of agreed-upon service period and the effect of the cancellation. The agreement shall require that if, at the time of cancellation of the incentive, the employee has received incentive payments which exceed the amount which bears the same relationship to the total amount to be paid under the agreement as the completed service period bears to the agreed-upon service period, the employee shall repay that excess amount, at a minimum, except that an employee who is involuntarily reassigned to a position stationed outside the territory, commonwealth, or possession or involuntarily separated (not for cause on*

*charges of misconduct, delinquency, or inefficiency) may not be required to repay any excess amounts.*

*''(d) An agency may not put an extended assignment incentive into effect during a period in which the employee is fulfilling a recruitment or relocation bonus service agreement under section 5753 or for which an employee is receiving a retention allowance under section 5754.*

*''(e) Extended assignment incentive payments may not be considered part of the basic pay of an employee.*

*''(f) The Office of Personnel Management may prescribe regulations for the administration of this section, including regulations on an employee's entitlement to retain or receive incentive payments when an agreement is canceled. Neither this section nor implementing regulations may impair any agency's independent authority to administratively determine compensation for a class of its employees.''; and*

*(2) in the analysis by adding at the end the following:*

*''5757. Extended assignment incentive.''.*

*(b) CONFORMING AMENDMENT.—Section 5307(a)(2)(B) of title 5, United States Code, is amended by striking ''or 5755'' and inserting ''5755, or 5757''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act.*

*(d) REPORT.—No later than 3 years after the effective date of this section, the Office of Personnel Management, after consultation with affected agencies, shall submit a report to Congress assessing the effectiveness of the extended assignment incentive authority as a human resources management tool and making recommendations for any changes necessary to improve the effectiveness of the incentive authority. Each agency shall maintain such records and report such information, including the number and size of incentive offers made and accepted or declined by geographic location and occupation, in such format and at such times as the Office of Personnel Management may prescribe, for use in preparing the report.*

## *TITLE III—MISCELLANEOUS*

### *SEC. 301. REPEALERS.*

*(a) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL INSTITUTE OF CORRECTIONS.—Chapter 319 of title 18, United States Code, is amended by striking section 4353.*

*(b) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES MARSHALS SERVICE.—Section 561 of title 28, United States Code, is amended by striking subsection (i).*

*(c) REDUNDANT AUTHORIZATIONS OF PAYMENTS FOR REWARDS.—*

*(1) Public Law 107–56 is amended by striking section 501.*

*(2) Chapter 203 of title 18, United States Code, is amended by striking sections 3059, 3059A, 3059B, 3075, and all the matter after the first sentence of 3072.*

*(3) Public Law 101–647 is amended in section 2565, by replacing all the matter after ''2561'' in subsection (c)(1) with ''the Attorney General may, in his discretion, pay a reward to the declarant'' and by striking subsection (e); and by striking section 2569.*

### *SEC. 302. TECHNICAL AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE.*

*Title 18 of the United States Code is amended—*

*(1) in section 4041 by striking ''at a salary of $10,000 a year'';*

*(2) in section 4013—*

*(A) in subsection (a)—*

*(i) by replacing ''the support of United States prisoners'' with ''Federal prisoner detention'';*

*(ii) in paragraph (2) by adding ''and'' after ''hire;'';*

*(iii) in paragraph (3) by replacing ''entities; and'' with ''entities.''; and*

*(iv) in paragraph (4) by inserting ''The Attorney General, in support of Federal prisoner detainees in non-Federal institutions, is authorized to make payments, from funds appropriated for State and local law enforcement assistance, for'' before ''entering''; and*

*(B) by redesignating—*

*(i) subsections (b) and (c) as subsections (c) and (d); and*

*(ii) paragraph (a)(4) as subsection (b), and subparagraphs (A), (B), and (C), of such paragraph (a)(4) as paragraphs (1), (2), and (3) of such subsection (b); and*

*(3) in section 209(a)—*

*(A) by striking ''or makes'' and inserting ''makes''; and*

*(B) by striking ''supplements the salary of, any'' and inserting ''supplements, the salary of any''.*

### *SEC. 303. REQUIRED SUBMISSION OF PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE FOR FISCAL YEARS 2004 AND 2005.*

*When the President submits to the Congress the budget of the United States Government for fiscal year 2004, the President shall simultaneously submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate such proposed legislation authorizing appropriations for the Department of Justice for fiscal years 2004 and 2005 as the President may judge necessary and expedient.*

### *SEC. 304. STUDY OF UNTESTED RAPE EXAMINATION KITS.*

*Not later than 6 months after the date of enactment of this Act, the Attorney General shall conduct a study to assess and report to Congress the number of untested rape examination kits that currently exist nationwide and shall submit to the Congress a report containing a summary of the results of such study. For the purpose of carrying out such study, the Attorney General shall attempt to collect information from all law enforcement jurisdictions in the United States.*

### *SEC. 305. REPORTS ON USE OF DCS 1000 (CARNIVORE).*

*(a) REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER 18 U.S.C. 3123.—At the same time that the Attorney General submits to Congress the annual reports required by section 3126 of title 18, United States Code, that are respectively next due after the end of each of the fiscal years 2002 and 2003, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, on the number of orders under section 3123 applied for by law enforcement agencies of the Department of Justice whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program), which report shall include information concerning—*

*(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;*

*(2) the offense specified in the order or application, or extension of an order;*

*(3) the number of investigations involved;*

*(4) the number and nature of the facilities affected;*

*(5) the identity of the applying investigative or law enforcement agency making the application for an order; and*

*(6) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.*

*(b) REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER 18 U.S.C. 2518.—At the same time that the Attorney General, or Assistant Attorney General specially designated by the Attorney General, submits to the Administrative Office of the United States Courts the annual report required by section 2519(2) of title 18, United States Code, that is respectively next due after the end of each of the fiscal years 2002 and 2003, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, that contains the following information with respect to those orders described in that annual report that were applied for by law enforcement agencies of the Department of Justice and whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program)—*

*(1) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of title 18, United States Code, did not apply by reason of section 2518 (11) of title 18);*

*(2) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;*

*(3) the offense specified in the order or application, or extension of an order;*

*(4) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application;*

*(5) the nature of the facilities from which or place where communications were to be intercepted;*

*(6) a general description of the interceptions made under such order or extension, including—*

*(A) the approximate nature and frequency of incriminating communications intercepted;*

*(B) the approximate nature and frequency of other communications intercepted;*

*(C) the approximate number of persons whose communications were intercepted;*

*(D) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order; and*

*(E) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;*

*(7) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;*

*(8) the number of trials resulting from such interceptions;*

*(9) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;*

*(10) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and*

*(11) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.*

### *SEC. 306. STUDY OF ALLOCATION OF LITIGATING ATTORNEYS.*

*Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit a report to the chairman and ranking minority member of the Committees on the Judiciary of the House of Representatives and Committee on the Judiciary of the Senate, detailing the distribution or allocation of appropriated funds, attorneys and other personnel, and per-attorney workloads, for each Office of United States Attorney and each division of the Department of Justice except the Justice Management Division.*

### *SEC. 307. USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.*

*Section 20105(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)) is amended to read as follows:*

*''(b) USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.—Funds provided under section 20103 or 20104 may be applied to the cost of—*

''(1) altering existing correctional facilities to provide separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or are serving sentences in adult prisons or jails;

''(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court with orientation and ongoing training regarding the unique needs of such offenders; and

''(3) providing ombudsmen to monitor the treatment of juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

**SEC. 308. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.**

Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

''(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice;

''(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;

''(4) may investigate allegations of criminal wrongdoing or administrative misconduct by a person who is the head of any agency or component of the Department of Justice; and

''(5) shall forward the results of any investigation conducted under paragraph (4), along with any appropriate recommendation for disciplinary action, to the Attorney General.''; and

(2) by adding at the end the following:

''(d) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, except with respect to allegations described in subsection (b)(3), shall report that information to the Inspector General.''.

**SEC. 309. REVIEW OF THE DEPARTMENT OF JUSTICE.**

(a) APPOINTMENT OF OVERSIGHT OFFICIAL WITHIN THE OFFICE OF INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Justice shall direct that 1 official from the office of the Inspector General be responsible for supervising and coordinating independent oversight of programs and operations of the Federal Bureau of Investigation until September 30, 2004.

(2) CONTINUATION OF OVERSIGHT.—The Inspector General may continue individual oversight in accordance with paragraph (1) after September 30, 2004, at the discretion of the Inspector General.

(b) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives, a plan for oversight of the Federal Bureau of Investigation, which plan may include—

(1) an audit of the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation;

(2) an audit and evaluation of programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action;

(3) a review of the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility;

(4) an investigation of allegations of serious misconduct by personnel of the Federal Bureau of Investigation;

(5) a review of matters relating to any other program or operation of the Federal Bureau of Investigation that the Inspector General determines requires review; and

(6) an identification of resources needed by the Inspector General to implement a plan for oversight of the Federal Bureau of Investigation.

(c) REPORT ON INSPECTOR GENERAL FOR FEDERAL BUREAU OF INVESTIGATION.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report and recommendation to the Chairperson and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives concerning—

(1) whether there should be established, within the Department of Justice, a separate office of the Inspector General for the Federal Bureau of Investigation that shall be responsible for supervising independent oversight of programs and operations of the Federal Bureau of Investigation;

(2) what changes have been or should be made to the rules, regulations, policies, or practices governing the Federal Bureau of Investigation in order to assist the Office of the Inspector General in effectively exercising its authority to investigate the conduct of employees of the Federal Bureau of Investigation;

(3) what differences exist between the methods and practices used by different Department of Justice components in the investigation and adjudication of alleged misconduct by Department of Justice personnel;

(4) what steps should be or are being taken to make the methods and practices described in paragraph (3) uniform throughout the Department of Justice; and

(5) whether a set of recommended guidelines relating to the discipline of Department of Justice personnel for misconduct should be developed, and what factors, such as the nature and seriousness of the misconduct, the prior history of the employee, and the rank and seniority of the employee at the time of the misconduct, should be taken into account in establishing such recommended disciplinary guidelines.

**SEC. 310. AUTHORIZATION OF APPROPRIATIONS.**

(a) DEPARTMENT OF JUSTICE.—There is authorized to be appropriated $2,000,000 to the Department of Justice for fiscal year 2003—

(1) for salary, pay, retirement, and other costs associated with increasing the staffing level of the Office of Inspector General by 25 full-time employees who shall conduct an increased number of audits, inspections, and investigations of alleged misconduct by employees of the Federal Bureau of Investigation;

(2) to fund expanded audit coverage of the grant programs administered by the Office of Justice Programs of the Department of Justice; and

(3) to conduct special reviews of efforts by the Federal Bureau of Investigation to implement recommendations made by the Office of Inspector General in reports on alleged misconduct by the Bureau.

(b) FEDERAL BUREAU OF INVESTIGATION.—There is authorized to be appropriated $1,700,000 to the Federal Bureau of Investigation for fiscal year 2003 for salary, pay, retirement, and other costs associated with increasing the staffing level of the Office of Professional Responsibility by 10 full-time special agents and 4 full-time support employees.

**SEC. 311. REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.**

(a) REPEAL OF COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES.—Section 808 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat.1310) is repealed.

(b) REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.—Not later than 45 days after the end of fiscal year 2002, the Attorney General shall submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report on the number of investigations and prosecutions under section 111 of title 18, United States Code, and section 115 of title 18, United States Code, for the fiscal year 2002.

**SEC. 312. ADDITIONAL FEDERAL JUDGESHIPS.**

(a) PERMANENT DISTRICT JUDGES FOR THE DISTRICT COURTS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 5 additional district judges for the southern district of California;

(B) 1 additional district judge for the western district of North Carolina; and

(C) 2 additional district judges for the western district of Texas.

(2) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of paragraph (1) of this subsection, such table is amended—

(A) by striking the item relating to California and inserting the following:

''California:

| | |
|---|---|
| Northern | 14 |
| Eastern | 6 |
| Central | 27 |
| Southern | 13''; |

(B) by striking the item relating to North Carolina and inserting the following:

''North Carolina:

| | |
|---|---|
| Eastern | 4 |
| Middle | 4 |
| Western | 4''; |

and

(C) by striking the item relating to Texas and inserting the following:

''Texas:

| | |
|---|---|
| Northern | 12 |
| Southern | 19 |
| Eastern | 7 |
| Western | 13''. |

(3) EFFECTIVE DATE.—This subsection shall take effect on July 15, 2003.

(b) DISTRICT JUDGESHIPS FOR THE CENTRAL AND SOUTHERN DISTRICTS OF ILLINOIS, THE NORTHERN DISTRICT OF NEW YORK, AND THE EASTERN DISTRICT OF VIRGINIA.—

(1) CONVERSION OF TEMPORARY JUDGESHIPS TO PERMANENT JUDGESHIPS.—The existing district judgeships for the central district and the southern district of Illinois, the northern district of New York, and the eastern district of Virginia authorized by section 203(c) (3), (4), (9), and (12) of the Judicial Improvements Act of 1990 (Public Law 101–650, 28 U.S.C. 133 note) shall be authorized under section 133 of title 28, United States Code, and the incumbents in such offices shall hold the offices under section 133 of title 28, United States Code (as amended by this section).

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table contained in section 133(a) of title 28, United States Code, is amended—

(A) by striking the item relating to Illinois and inserting the following:

''Illinois:
Northern ..... 22
Central ..... 4
Southern ..... 4'';

(B) by striking the item relating to New York and inserting the following:

''New York:
Northern ..... 5
Southern ..... 28
Eastern ..... 15
Western ..... 4'';

and

(C) by striking the item relating to Virginia and inserting the following:

''Virginia:
Eastern ..... 11
Western ..... 4''.

(3) EFFECTIVE DATE.—With respect to the central or southern district of Illinois, the northern district of New York, or the eastern district of Virginia, this subsection shall take effect on the earlier of—

(A) the date on which the first vacancy in the office of district judge occurs in such district; or

(B) July 15, 2003.

(c) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the northern district of Alabama;

(B) 1 additional judge for the district of Arizona;

(C) 1 additional judge for the central district of California;

(D) 1 additional judge for the southern district of Florida;

(E) 1 additional district judge for the district of New Mexico;

(F) 1 additional district judge for the western district of North Carolina; and

(G) 1 additional district judge for the eastern district of Texas.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the offices of district judge authorized by this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created in the applicable district by this subsection, shall not be filled.

(3) EFFECTIVE DATE.—This subsection shall take effect on July 15, 2003.

(d) EXTENSION OF TEMPORARY FEDERAL DISTRICT COURT JUDGESHIP FOR THE NORTHERN DISTRICT OF OHIO.—

(1) IN GENERAL.—Section 203(c) of the Judicial Improvement Act of 1990 (28 U.S.C. 133 note) is amended—

(A) in the first sentence following paragraph (12), by striking ''and the eastern district of Pennsylvania'' and inserting '', the eastern district of Pennsylvania, and the northern district of Ohio''; and

(B) by inserting after the third sentence following paragraph (12) ''The first vacancy in the office of district judge in the northern district of Ohio occurring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of enactment of this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this section.

## TITLE IV—VIOLENCE AGAINST WOMEN

### SEC. 401. SHORT TITLE.

This title may be cited as the ''Violence Against Women Office Act''.

### SEC. 402. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE.

Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) is amended—

(1) in section 2002(d)—

(A) in paragraph (2), by striking ''section 2005'' and inserting ''section 2010''; and

(B) in paragraph (3), by striking ''section 2006'' and inserting ''section 2011'';

(2) by redesignating sections 2002 through 2006 as sections 2006 through 2011, respectively; and

(3) by inserting after section 2001 the following:

### ''SEC. 2002. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE.

''(a) IN GENERAL.—There is hereby established within the Department of Justice, under the general authority of the Attorney General, a Violence Against Women Office (in this part referred to as the ''Office'').

''(b) SEPARATE OFFICE.—The Office shall be a separate and distinct office within the Department of Justice, headed by a Director, who shall report to the Attorney General and serve as Counsel to the Attorney General on the subject of violence against women, and who shall have final authority over all grants, cooperative agreements, and contracts awarded by the Office.

''(c) JURISDICTION.—Under the general authority of the Attorney General, the Office—

''(1) shall have sole jurisdiction over all duties and functions described in section 2004; and

''(2) shall be solely responsible for coordination with other departments, agencies, or offices of all activities authorized or undertaken under the Violence Against Women Act of 1994 (title VI of Public 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

### ''SEC. 2003. DIRECTOR OF VIOLENCE AGAINST WOMEN OFFICE.

''(a) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint a Director for the Violence Against Women Office (in this title referred to as the 'Director') to be responsible, under the general authority of the Attorney General, for the administration, coordination, and implementation of the programs and activities of the Office.

''(b) OTHER EMPLOYMENT.—The Director shall not—

''(1) engage in any employment other than that of serving as Director; or

''(2) hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) or the Violence Against Women Act of 2000 (division B of Public Law 106–386).

''(c) VACANCY.—In the case of a vacancy, the President may designate an officer or employee who shall act as Director during the vacancy.

''(d) COMPENSATION.—The Director shall be compensated at a rate of pay not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

### ''SEC. 2004. DUTIES AND FUNCTIONS OF DIRECTOR OF VIOLENCE AGAINST WOMEN OFFICE.

The Director shall have the following duties:

''(1) Maintaining liaison with the judicial branches of the Federal and State Governments on matters relating to violence against women.

''(2) Providing information to the President, the Congress, the judiciary, State, local, and tribal governments, and the general public on matters relating to violence against women.

''(3) Serving, at the request of the Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women.

''(4) Serving, at the request of the President, acting through the Attorney General, as the representative of the United States Government on human rights and economic justice matters related to violence against women in international fora, including, but not limited to, the United Nations.

''(5) Carrying out the functions of the Department of Justice under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (division B of Public Law 106–386), including with respect to those functions—

''(A) the development of policy, protocols, and guidelines;

''(B) the development and management of grant programs and other programs, and the provision of technical assistance under such programs; and

''(C) the award and termination of grants, cooperative agreements, and contracts.

''(6) Providing technical assistance, coordination, and support to—

''(A) other components of the Department of Justice, in efforts to develop policy and to enforce Federal laws relating to violence against women, including the litigation of civil and criminal actions relating to enforcing such laws;

''(B) other Federal, State, local, and tribal agencies, in efforts to develop policy, provide technical assistance, and improve coordination among agencies carrying out efforts to eliminate violence against women, including Indian or indigenous women; and

''(C) grantees, in efforts to combat violence against women and to provide support and assistance to victims of such violence.

''(7) Exercising such other powers and functions as may be vested in the Director pursuant to this part or by delegation of the Attorney General.

''(8) Establishing such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Office.

### ''SEC. 2005. STAFF OF VIOLENCE AGAINST WOMEN OFFICE.

''The Attorney General shall ensure that the Director has adequate staff to support the Director in carrying out the Director's responsibilities under this part.''.

### ''SEC. 2006. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as are necessary to carry out this part for each fiscal year until fiscal year 2005.''.

### SEC. 403. EFFECTIVE DATE.

This title shall take effect 90 days after this bill becomes law.

## DIVISION B—MISCELLANEOUS DIVISION

## TITLE I—BOYS AND GIRLS CLUBS OF AMERICA

### SEC. 1101. BOYS AND GIRLS CLUBS OF AMERICA.

Section 401 of the Economic Espionage Act of 1996 (42 U.S.C. 13751 note) is amended—

(1) in subsection (a)(2)—

(A) by striking ''1,000'' and inserting ''1,200'';

(B) by striking ''2,500'' and inserting ''4,000''; and

(C) by striking ''December 31, 1999'' and inserting ''December 31, 2005, serving not less than 5,000,000 young people'';

(2) in subsection (c)—

(A) in paragraph (1), by striking ''1997, 1998, 1999, 2000, and 2001'' and inserting ''2002, 2003, 2004, 2005, and 2006''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''1,000'' and inserting ''1,200''; and

(ii) in subparagraph (B), by striking ''2,500 Boys and Girls Clubs of America facilities in operation before January 1, 2000'' and inserting ''4,000 Boys and Girls Clubs of America facilities in operation before January 1, 2007''; and

(3) in subsection (e), by striking paragraph (1) and paragraph (2) and inserting the following:

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $70,000,000 for fiscal year 2002;

''(B) $80,000,000 for fiscal year 2003;

''(C) $80,000,000 for fiscal year 2004; and

''(D) $80,000,000 for fiscal year 2005.''.

## TITLE II—DRUG ABUSE EDUCATION, PREVENTION, AND TREATMENT ACT OF 2002

**SEC. 2001. SHORT TITLE.**

This title may be cited as the ''Drug Abuse Education, Prevention, and Treatment Act of 2002''.

### Subtitle A—Drug-Free Prisons and Jails

**SEC. 2101. USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE FOR SERVICES DURING AND AFTER INCARCERATION.**

Section 1901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff) is amended by adding at the end the following:

''(c) ADDITIONAL USE OF FUNDS.—States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with Federal requirements may use funds awarded under this part for treatment and sanctions both during incarceration and after release.''.

**SEC. 2102. JAIL-BASED SUBSTANCE ABUSE TREATMENT PROGRAMS.**

Part S of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) in section 1901(a)—

(A) by striking ''purpose of developing'' and inserting the following: ''purpose of—

''(1) developing''; and

(B) striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(2) encouraging the establishment and maintenance of drug-free prisons and jails.'';

(2) in section 1902, by adding at the end the following:

''(f) USE OF GRANT AMOUNTS FOR NONRESIDENTIAL AFTERCARE SERVICES.—A State may use amounts received under this part to provide nonresidential substance abuse treatment aftercare services for inmates or former inmates that meet the requirements of subsection (c), if the chief executive officer of the State certifies to the Attorney General that the State is providing, and will continue to provide, an adequate level of residential treatment services.''; and

(3) in section 1904, by adding at the end the following:

''(c) LOCAL ALLOCATION.—At least 10 percent of the total amount made available to a State under section 1904(a) for any fiscal year shall be used by the State to make grants to local correctional and detention facilities in the State (provided such facilities exist therein), for the purpose of assisting jail-based substance abuse treatment programs that are effective and science-based established by those local correctional facilities.''.

**SEC. 2103. MANDATORY REVOCATION OF PROBATION AND SUPERVISED RELEASE FOR FAILING A DRUG TEST.**

(a) REVOCATION OF PROBATION.—Section 3565(b) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' after the semicolon;

(2) in paragraph (3), by striking ''(4),'' and inserting ''(4); or''; and

(3) by adding after paragraph (3) the following:

''(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;''.

(b) REVOCATION OF SUPERVISED RELEASE.—Section 3583(g) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' after the semicolon;

(2) in paragraph (3), by inserting ''or'' after the semicolon; and

(3) by adding after paragraph (3) the following:

''(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;''.

### Subtitle B—Treatment and Prevention

**SEC. 2201. REPORT ON DRUG-TESTING TECHNOLOGIES.**

(a) REQUIREMENT.—The National Institute of Justice shall conduct a study of drug-testing technologies in order to identify and assess the efficacy, accuracy, and usefulness for purposes of the National effort to detect the use of illicit drugs of any drug-testing technologies (including the testing of hair) that may be used as alternatives or complements to urinalysis as a means of detecting the use of such drugs.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Institute shall submit to Congress a report on the results of the study conducted under subsection (a).

**SEC. 2202. DRUG AND SUBSTANCE ABUSE TREATMENT, PREVENTION, EDUCATION, AND RESEARCH STUDY.**

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the President, after consultation with the Attorney General, Secretary of Health and Human Services, Secretary of Education, and other appropriate Federal officers, shall—

(1) conduct a thorough review of all Federal drug and substance abuse treatment, prevention, education, and research programs; and

(2) make such recommendations to Congress as the President may judge necessary and expedient to streamline, consolidate, coordinate, simplify, and more effectively conduct and deliver drug and substance abuse treatment, prevention, and education.

(b) REPORT TO CONGRESS.—The report to Congress shall—

(1) contain a survey of all Federal drug and substance abuse treatment, prevention, education, and research programs;

(2) indicate the legal authority for each program, the amount of funding in the last 2 fiscal years for each program, and a brief description of the program; and

(3) identify authorized programs that were not funded in fiscal year 2002 or 2003.

**SEC. 2203. DRUG ABUSE AND ADDICTION RESEARCH.**

Section 464N of the Public Health Service Act (42 U.S.C. 285o–2) is amended by striking subsection (c) and inserting the following:

''(c) DRUG ABUSE AND ADDITION RESEARCH.—

''(1) GRANTS OR COOPERATIVE AGREEMENTS.—The Director of the Institute may make grants or enter into cooperative agreements to expand the current and ongoing interdisciplinary research and clinical trials with treatment centers of the National Drug Abuse Treatment Clinical Trials Network relating to drug abuse and addiction, including related biomedical, behavioral, and social issues.

''(2) USE OF FUNDS.—Amounts made available under a grant or cooperative agreement under paragraph (1) for drug abuse and addiction may be used for research and clinical trials relating to—

''(A) the effects of drug abuse on the human body, including the brain;

''(B) the addictive nature of drugs and how such effects differ with respect to different individuals;

''(C) the connection between drug abuse and mental health;

''(D) the identification and evaluation of the most effective methods of prevention of drug abuse and addiction;

''(E) the identification and development of the most effective methods of treatment of drug addiction, including pharmacological treatments;

''(F) risk factors for drug abuse;

''(G) effects of drug abuse and addiction on pregnant women and their fetuses; and

''(H) cultural, social, behavioral, neurological, and psychological reasons that individuals abuse drugs, or refrain from abusing drugs.

''(3) RESEARCH RESULTS.—The Director shall promptly disseminate research results under this subsection to Federal, State, and local entities involved in combating drug abuse and addiction.

''(4) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each fiscal year.

''(B) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated pursuant to the authorization of appropriations in subparagraph (A) for a fiscal year shall supplement and not supplant any other amounts appropriated in such fiscal year for research on drug abuse and addiction.''.

### Subtitle C—Drug Courts

**SEC. 2301. DRUG COURTS.**

(a) DRUG COURTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after part DD the following new part:

### "PART EE—DRUG COURTS

**"SEC. 2951. GRANT AUTHORITY.**

''(a) IN GENERAL.—The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for adult drug courts, juvenile drug courts, family drug courts, and tribal drug courts that involve—

''(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders;

''(2) coordination with the appropriate State or local prosecutor; and

''(3) the integrated administration of other sanctions and services, which shall include—

''(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

''(B) substance abuse treatment for each participant;

''(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress;

''(D) offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services;

''(E) payment, in whole or part, by the offender of treatment costs, to the extent practicable, such as costs for urinalysis or counseling; and

''(F) payment, in whole or part, by the offender of restitution, to the extent practicable, to either a victim of the offender's offense or to a restitution or similar victim support fund.

''(b) LIMITATION.—Economic sanctions imposed on an offender pursuant to this section shall not be at a level that would interfere with the offender's rehabilitation.

**"SEC. 2952. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.**

''The Attorney General shall—

''(1) issue regulations or guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

''(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

**"SEC. 2953. DEFINITION.**

''(a) IN GENERAL.—Except as provided in subsection (b), in this part, the term 'violent offender' means a person who—

''(1) is charged with or convicted of an offense, during the course of which offense or conduct—

''(A) the person carried, possessed, or used a firearm or dangerous weapon;

''(B) there occurred the death of or serious bodily injury to any person; or

''(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or

''(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

''(b) DEFINITION FOR PURPOSES OF JUVENILE DRUG COURTS.—For purposes of juvenile drug courts, the term 'violent offender' means a juvenile who has been convicted of, or adjudicated delinquent for, an offense that—

''(1) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another, or the possession or use of a firearm; or

''(2) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

**''SEC. 2954. ADMINISTRATION.**

''(a) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this part.

''(b) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this part.

''(c) REGULATORY AUTHORITY.—The Attorney General may issue regulations and guidelines necessary to carry out this part.

''(d) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

''(1) include a long-term strategy and detailed implementation plan that shall provide for the consultation and coordination with appropriate State and local prosecutors, particularly when program participants fail to comply with program requirements;

''(2) explain the applicant's inability to fund the program adequately without Federal assistance;

''(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

''(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

''(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

''(6) certify that participating offenders will be supervised by 1 or more designated judges with responsibility for the drug court program;

''(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

''(8) describe the methodology that will be used in evaluating the program.

**''SEC. 2955. APPLICATIONS.**

''To request funds under this part, the chief executive or the chief justice of a State or the chief executive or judge of a unit of local government or Indian tribal government, or the chief judge of a State court or the judge of a local court or Indian tribal court shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

**''SEC. 2956. FEDERAL SHARE.**

''(a) IN GENERAL.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2955 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section.

''(b) IN-KIND CONTRIBUTIONS.—In-kind contributions may constitute a portion of the non-Federal share of a grant.

**''SEC. 2957. DISTRIBUTION AND ALLOCATION.**

''(a) GEOGRAPHIC DISTRIBUTION.—The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

''(b) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this part have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this part not less than 0.50 percent of the total amount appropriated in the fiscal year for grants pursuant to this part.

**''SEC. 2958. REPORT.**

''A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a description and an evaluation report on a date specified by the Attorney General regarding the effectiveness of this part.

**''SEC. 2959. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.**

''(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

''(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees (including uniform data collection standards and reporting requirements), the Attorney General shall carry out or make arrangements for evaluations of programs that receive support under this part.

''(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.''.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the matter relating to part DD the following:

''PART EE—DRUG COURTS

''Sec. 2951. Grant authority.
''Sec. 2952. Prohibition of participation by violent offenders.
''Sec. 2953. Definition.
''Sec. 2954. Administration.
''Sec. 2955. Applications.
''Sec. 2956. Federal share.
''Sec. 2957. Distribution and allocation.
''Sec. 2958. Report.
''Sec. 2959. Technical assistance, training, and evaluation.''.

(c) IMPLEMENTATION OF RECOMMENDATIONS.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall—

(1) devise a plan to implement recommendations of the General Accounting Office to—

(A) develop and implement a management information system that is able to track and readily identify the universe of drug court programs funded by the Drug Court Program Office of the Department of Justice;

(B) take steps to ensure and sustain an adequate grantee response rate to the Drug Court Program Office's data collection efforts by improving efforts to notify and remind grantees of their reporting requirements;

(C) take corrective action toward grantees that do not comply with the data collection reporting requirement of the Department of Justice;

(D) reinstate the collection of post-program data in the Drug Court Program Office's data collection effort, selectively spot checking grantee responses to ensure accurate reporting;

(E) analyze performance and outcome data collected from grantees and report annually on the results;

(F) consolidate the multiple Department of Justice-funded drug court program-related data collection efforts to better ensure that the primary focus is on the collection and reporting of data on Drug Court Program Office-funded drug court programs;

(G) conduct a methodologically sound national impact evaluation of Drug Court Program Office-funded drug court programs; and

(H) consider ways to reduce the time needed to provide information on the overall impact of Federally-funded drug court programs; and

(2) submit a report on the plan to the Committees on the Judiciary of the Senate and the House of Representatives.

**SEC. 2302. AUTHORIZATION OF APPROPRIATIONS.**

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in paragraph (3), by inserting before the period at the end the following: ''or EE''; and

(2) by adding at the end the following:

''(25)(A) Except as provided in subparagraph (C), there are authorized to be appropriated to carry out part EE—

''(i) $50,000,000 for fiscal year 2002;
''(ii) $54,000,000 for fiscal year 2003;
''(iii) $58,000,000 for fiscal year 2004; and
''(iv) $60,000,000 for fiscal year 2005.

''(B) The Attorney General shall reserve not less than 1 percent and not more than 4.5 percent of the sums appropriated for this program in each fiscal year for research and evaluation of this program.

''(C) No funds made available to carry out part EE shall be expended if the Attorney General fails to submit the report required to be submitted under section 2401(c) of title II of Division B of the 21st Century Department of Justice Appropriations Authorization Act.''.

**SEC. 2303. STUDY BY THE GENERAL ACCOUNTING OFFICE.**

(a) IN GENERAL.—The Comptroller General of the United States shall study and assess the effectiveness and impact of grants authorized by part EE of title I of the Omnibus Crime Control and Safe Streets Act of 1968 as added by section 2401 and report to Congress the results of the study on or before January 1, 2005.

(b) DOCUMENTS AND INFORMATION.—The Attorney General and grant recipients shall provide the Comptroller General with all relevant documents and information that the Comptroller General deems necessary to conduct the study under subsection (a), including the identities and criminal records of program participants.

(c) CRITERIA.—In assessing the effectiveness of the grants made under programs authorized by part EE of the Omnibus Crime Control and Safe Streets Act of 1968, the Comptroller General shall consider, among other things—

(1) recidivism rates of program participants;

(2) completion rates among program participants;

(3) drug use by program participants; and

(4) the costs of the program to the criminal justice system.

**Subtitle D—Program for Successful Reentry of Criminal Offenders Into Local Communities**

**CHAPTER 1—POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES**

**SEC. 2411. POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES.**

(a) FEDERAL REENTRY CENTER DEMONSTRATION.—

(1) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—The Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, shall establish the Federal Reentry Center Demonstration project. The project shall involve appropriate prisoners from the Federal prison population and shall utilize community corrections facilities, home confinement, and a coordinated response by Federal agencies to assist participating prisoners in preparing for and adjusting to reentry into the community.

*(2) PROJECT ELEMENTS.—The project authorized by paragraph (1) shall include the following core elements:*

*(A) A Reentry Review Team for each prisoner, consisting of a representative from the Bureau of Prisons, the United States Probation System, the United States Parole Commission, and the relevant community corrections facility, who shall initially meet with the prisoner to develop a reentry plan tailored to the needs of the prisoner.*

*(B) A system of graduated levels of supervision with the community corrections facility to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a reasonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project.*

*(C) Substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training, life skills instruction, conflict resolution skills training, batterer intervention programs, assistance obtaining suitable affordable housing, and other programming to promote effective reintegration into the community as needed.*

*(3) PROBATION OFFICERS.—From funds made available to carry out this section, the Director of the Administrative Office of the United States Courts shall assign 1 or more probation officers from each participating judicial district to the Reentry Demonstration project. Such officers shall be assigned to and stationed at the community corrections facility and shall serve on the Reentry Review Teams.*

*(4) PROJECT DURATION.—The Reentry Center Demonstration project shall begin not later than 6 months following the availability of funds to carry out this subsection, and shall last 3 years.*

*(b) DEFINITIONS.—In this section, the term ''appropriate prisoner'' shall mean a person who is considered by prison authorities—*

*(1) to pose a medium to high risk of committing a criminal act upon reentering the community; and*

*(2) to lack the skills and family support network that facilitate successful reintegration into the community.*

*(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated, to remain available until expended—*

*(1) to the Federal Bureau of Prisons—*
*(A) $1,375,000 for fiscal year 2003;*
*(B) $1,110,000 for fiscal year 2004;*
*(C) $1,130,000 for fiscal year 2005;*
*(D) $1,155,000 for fiscal year 2006; and*
*(E) $1,230,000 for fiscal year 2007; and*
*(2) to the Federal Judiciary—*
*(A) $3,380,000 for fiscal year 2003;*
*(B) $3,540,000 for fiscal year 2004;*
*(C) $3,720,000 for fiscal year 2005;*
*(D) $3,910,000 for fiscal year 2006; and*
*(E) $4,100,000 for fiscal year 2007.*

### *CHAPTER 2—STATE REENTRY GRANT PROGRAMS*

**SEC. 2421. AMENDMENTS TO THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.**

*(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting after part EE the following new part:*

**"PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY**

**"SEC. 2976. ADULT AND JUVENILE OFFENDER STATE AND LOCAL REENTRY DEMONSTRATION PROJECTS.**

*''(a) GRANT AUTHORIZATION.—The Attorney General shall make grants of up to $1,000,000 to States, Territories, and Indian tribes, in partnership with units of local government and nonprofit organizations, for the purpose of establishing adult and juvenile offender reentry demonstration projects.*

*''(b) ADULT OFFENDER REENTRY DEMONSTRATION PROJECTS.—Funds for adult offender demonstration projects may be expended for—*

*''(1) oversight/monitoring of released offenders;*

*''(2) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;*

*''(3) convening community impact panels, victim impact panels or victim impact educational classes; and*

*''(4) establishing and implementing graduated sanctions and incentives.*

*''(c) JUVENILE OFFENDER REENTRY DEMONSTRATION PROJECTS.—Funds for the juvenile offender reentry demonstration projects may be expended for—*

*''(1) providing returning juvenile offenders with drug and alcohol testing and treatment and mental and medical health assessment and services;*

*''(2) convening victim impact panels, restorative justice panels, or victim impact educational classes for juvenile offenders;*

*''(3) oversight/monitoring of released juvenile offenders; and*

*''(4) providing for the planning of reentry services when the youth is initially incarcerated and coordinating the delivery of community-based services, such as education, family involvement and support, and other services as needed.*

*''(d) SUBMISSION OF APPLICATION.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subpart shall—*

*''(1) describe a long-term strategy and detailed implementation plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;*

*''(2) identify the governmental and community agencies that will be coordinated by this project;*

*''(3) certify that there has been appropriate consultation with all affected agencies and there will be appropriate coordination with all affected agencies in the implementation of the program, including existing community corrections and parole; and*

*''(4) describe the methodology and outcome measures that will be used in evaluating the program.*

*''(e) APPLICANTS.—The applicants as designated under 2601(a)—*

*''(1) shall prepare the application as required under subsection 2601(b); and*

*''(2) shall administer grant funds in accordance with the guidelines, regulations, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this part.*

*''(f) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of the project funded under this title unless the Attorney General waives, wholly or in part, the requirements of this section.*

*''(g) REPORTS.—Each entity that receives a grant under this part shall submit to the Attorney General, for each year in which funds from a grant received under this part is expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains—*

*''(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this part; and*

*''(2) such other information as the Attorney General may require.*

*''(h) AUTHORIZATION OF APPROPRIATIONS.—*

*''(1) IN GENERAL.—To carry out this section, there are authorized to be appropriated $15,000,000 for fiscal year 2003, $15,500,000 for fiscal year 2004, and $16,000,000 for fiscal year 2005.*

*''(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year—*

*''(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and*

*''(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.*

**"SEC. 2977. STATE REENTRY PROJECT EVALUATION.**

*(a) EVALUATION.—The Attorney General shall evaluate the demonstration projects authorized by section 2976 to determine their effectiveness.*

*(b) REPORT.—Not later than April 30, 2005, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing—*

*(1) the findings of the evaluation required by subsection (a); and*

*(2) any recommendations the Attorney General has with regard to expanding, changing, or eliminating the demonstration projects*

*''PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY ACT*

*''Sec. 2976. Adult Offender State and Local Reentry Demonstration Projects.*
*''Sec. 2977. State reentry project evaluation.''.*

### *Subtitle E—Other Matters*

**SEC. 2501. AMENDMENT TO CONTROLLED SUBSTANCES ACT.**

*Section 303(g)(2)(I) of the Controlled Substances Act is amended by striking ''on the date of enactment'' and all that follows through ''such drugs,'' and inserting ''on the date of approval by the Food and Drug Administration of a drug in schedule III, IV, or V, a State may not preclude a practitioner from dispensing or prescribed such drug, or combination of such drugs''.*

**SEC. 2502. STUDY OF METHAMPHETAMINE TREATMENT.**

*Section 3633 of the Methamphetamine Anti-Proliferation Act of 2000 (114 Stat. 1236) is amended by striking ''the Institute of Medicine of the National Academy of Sciences'' and inserting ''the National Institute on Drug Abuse''.*

**SEC. 2503. AUTHORIZATION OF FUNDS FOR DEA POLICE TRAINING IN SOUTH AND CENTRAL ASIA.**

*There is authorized to be appropriated to the Attorney General not less than $5,000,000 for fiscal year 2003 for regional antidrug training by the Drug Enforcement Administration for law enforcement entities (including police, border control, and other entities engaged in drug interdiction and narcotics control efforts), as well as increased precursor chemical control efforts in the South and Central Asia region.*

**SEC. 2504. UNITED STATES-THAILAND DRUG PROSECUTOR EXCHANGE PROGRAM.**

*(a) PROGRAM AUTHORIZATION.—The Attorney General shall establish an exchange program in which prosecutors, judges, or policy makers from the Kingdom of Thailand participate in an exchange program to observe Federal prosecutors in an effort to learn about the various rules and procedures used to prosecute violations of federal criminal narcotics laws.*

*(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $75,000 for fiscal year 2003 and $75,000 for fiscal year 2004.*

## *TITLE III—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM*

**SEC. 3001. INCREASING THE PENALTY FOR USING PHYSICAL FORCE TO TAMPER WITH WITNESSES, VICTIMS, OR INFORMANTS.**

*(a) IN GENERAL.—Section 1512 of title 18, United States Code, is amended—*

*(1) in subsection (a)—*

*(A) in paragraph (1), by striking ''as provided in paragraph (2)'' and inserting ''as provided in paragraph (3)'';*

*(B) by redesignating paragraph (2) as paragraph (3);*

*(C) by inserting after paragraph (1) the following:*

''(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

''(A) influence, delay, or prevent the testimony of any person in an official proceeding;

''(B) cause or induce any person to—

''(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

''(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

''(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

''(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

''(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).''; and

(D) in paragraph (3), as redesignated—

(i) by striking ''and'' at the end of subparagraph (A); and

(ii) by striking subparagraph (B) and inserting the following:

''(B) in the case of—

''(i) an attempt to murder; or

''(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

''(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.'';

(2) in subsection (b), by striking ''or physical force''; and

(3) by adding at the end the following:

''(j) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.''.

(b) RETALIATING AGAINST A WITNESS.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(e) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.''.

(c) CONFORMING AMENDMENTS.—

(1) WITNESS TAMPERING.—Section 1512 of title 18, United States Code, is amended in subsections (b)(3) and (c)(2) by inserting ''supervised release,'' after ''probation''.

(2) RETALIATION AGAINST A WITNESS.—Section 1513 of title 18, United States Code, is amended in subsections (a)(1)(B) and (b)(2) by inserting ''supervised release,'' after ''probation''.

(d) RESTORATION.—Section 1402(c) of the Victims of Crime Act of 1984 is amended to read as it did on November 27, 2001.

**SEC. 3002. CORRECTION OF ABERRANT STATUTES TO PERMIT IMPOSITION OF BOTH A FINE AND IMPRISONMENT.**

(a) IN GENERAL.—Title 18 of the United States Code is amended—

(1) in section 401, by inserting ''or both,'' after ''fine or imprisonment,'';

(2) in section 1705, by inserting '', or both'' after ''years''; and

(3) in sections 1916, 2234, and 2235, by inserting '', or both'' after ''year''.

(b) IMPOSITION BY MAGISTRATE.—Section 636 of title 28, United States Code, is amended—

(1) in subsection (e)(2), by inserting '', or both,'' after ''fine or imprisonment''; and

(2) in subsection (e)(3), by inserting ''or both,'' after ''fine or imprisonment,''.

**SEC. 3003. REINSTATEMENT OF COUNTS DISMISSED PURSUANT TO A PLEA AGREEMENT.**

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

**''§3296. Counts dismissed pursuant to a plea agreement**

''(a) IN GENERAL.—Notwithstanding any other provision of this chapter, any counts of an indictment or information that are dismissed pursuant to a plea agreement shall be reinstated by the District Court if—

''(1) the counts sought to be reinstated were originally filed within the applicable limitations period;

''(2) the counts were dismissed pursuant to a plea agreement approved by the District Court under which the defendant pled guilty to other charges;

''(3) the guilty plea was subsequently vacated on the motion of the defendant; and

''(4) the United States moves to reinstate the dismissed counts within 60 days of the date on which the order vacating the plea becomes final.

''(b) DEFENSES; OBJECTIONS.—Nothing in this section shall preclude the District Court from considering any defense or objection, other than statute of limitations, to the prosecution of the counts reinstated under subsection (a).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Chapter 213 of title 18, United States Code, is amended in the table of sections by adding at the end the following new item:

''3296. Counts dismissed pursuant to a plea agreement.''.

**SEC. 3004. APPEALS FROM CERTAIN DISMISSALS.**

Section 3731 of title 18, United States Code, is amended by inserting '', or any part thereof'' after ''as to any one or more counts''.

**SEC. 3005. CLARIFICATION OF LENGTH OF SUPERVISED RELEASE TERMS IN CONTROLLED SUBSTANCE CASES.**

(a) DRUG ABUSE PENALTIES.—Subparagraphs (A), (B), (C), and (D) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) are amended by striking ''Any sentence'' and inserting ''Notwithstanding section 3583 of title 18, any sentence''.

(b) PENALTIES FOR DRUG IMPORT AND EXPORT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraphs (1), (2), and (3), by striking ''Any sentence'' and inserting ''Notwithstanding section 3583 of title 18, any sentence''; and

(2) in paragraph (4), by inserting ''notwithstanding section 3583 of title 18,'' before ''in addition to such term of imprisonment''.

**SEC. 3006. AUTHORITY OF COURT TO IMPOSE A SENTENCE OF PROBATION OR SUPERVISED RELEASE WHEN REDUCING A SENTENCE OF IMPRISONMENT IN CERTAIN CASES.**

Section 3582(c)(1)(A) of title 18, United States Code, is amended by inserting ''(and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)'' after ''may reduce the term of imprisonment''.

**SEC. 3007. CLARIFICATION THAT MAKING RESTITUTION IS A PROPER CONDITION OF SUPERVISED RELEASE.**

Subsections (c) and (e) of section 3583 of title 18, United States Code, are amended by striking ''and (a)(6) and inserting ''(a)(6), and (a)(7)''.

## TITLE IV—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2002

**SEC. 4001. SHORT TITLE.**

This title may be cited as the ''Criminal Law Technical Amendments Act of 2002''.

**SEC. 4002. TECHNICAL AMENDMENTS RELATING TO CRIMINAL LAW AND PROCEDURE.**

(a) MISSING AND INCORRECT WORDS.—

(1) CORRECTION OF GARBLED SENTENCE.—Section 510(c) of title 18, United States Code, is amended by striking ''fine of under this title'' and inserting ''fine under this title''.

(2) INSERTION OF MISSING WORDS.—Section 981(d) of title 18, United States Code, is amended by striking ''proceeds from the sale of this section'' and inserting ''proceeds from the sale of such property under this section''.

(3) CORRECTION OF INCORRECT WORD.—Sections 1425 through 1427, 1541 through 1544 and 1546(a) of title 18, United States Code, are each amended by striking ''to facility'' and inserting ''to facilitate''.

(4) CORRECTING ERRONEOUS AMENDATORY LANGUAGE ON EXECUTED AMENDMENT.—Effective on the date of the enactment of Public Law 103–322, section 60003(a)(13) of such public law is amended by striking ''$1,000,000 or imprisonment'' and inserting ''$1,000,000 and imprisonment''.

(5) CORRECTION OF REFERENCE TO SHORT TITLE OF LAW.—That section 2332d(a) of title 18, United States Code, which relates to financial transactions is amended by inserting ''of 1979'' after ''Export Administration Act''.

(6) ELIMINATION OF TYPOGRAPHICAL ERROR.—Section 1992(b) of title 18, United States Code, is amended by striking ''term or years'' and inserting ''term of years''.

(7) SPELLING CORRECTION.—Section 2339A(a) of title 18, United States Code, is amended by striking ''or an escape'' and inserting ''of an escape''.

(8) SECTION 3553.—Section 3553(e) of title 18, United States Code, is amended by inserting ''a'' before ''minimum''.

(9) MISSPELLING IN SECTION 205.—Section 205(d)(1)(B) of title 18, United States Code, is amended by striking ''groups's'' and inserting ''group's''.

(10) CONFORMING CHANGE AND INSERTING MISSING WORD IN SECTION 709.—The paragraph in section 709 of title 18, United States Code, that begins with ''A person who'' is amended—

(A) by striking ''A person who'' and inserting ''Whoever''; and

(B) by inserting ''or'' after the semicolon at the end.

(11) ERROR IN LANGUAGE BEING STRICKEN.—Effective on the date of its enactment, section 726(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(A) in subparagraphs (C) and (E), by striking ''section'' the first place it appears; and

(B) in subparagraph (G), by striking ''relating to'' the first place it appears.

(b) MARGINS, PUNCTUATION, AND SIMILAR ERRORS.—

(1) MARGIN ERROR.—Section 1030(c)(2) of title 18, United States Code, is amended so that the margins of subparagraph (B) and each of its clauses, are moved 2 ems to the left.

(2) CORRECTING CAPITALIZATION IN LANGUAGE TO BE STRICKEN.—Effective on the date of its enactment, section 607(g)(2) of the Economic Espionage Act of 1996 is amended by striking ''territory'' and inserting ''Territory''.

(3) CORRECTING PARAGRAPHING.—The material added to section 521(a) of title 18, United States Code, by section 607(q) of the Economic Espionage Act of 1996 is amended to appear as a paragraph indented 2 ems from the left margin.

(4) SUBSECTION PLACEMENT CORRECTION.—Section 1513 of title 18, United States Code, is amended by transferring subsection (d) so that it appears following subsection (c).

(5) CORRECTION TO ALLOW FOR INSERTION OF NEW SUBPARAGRAPH AND CORRECTION OF ERRONEOUS INDENTATION.—Section 1956(c)(7) of title 18, United States Code, is amended—

(A) in subparagraph (B)(ii), by moving the margin 2 ems to the right;

(B) by striking ''or'' at the end of subparagraph (D);

(C) by striking the period at the end of subparagraph (E) and inserting ''; or''; and

(D) in subparagraph (F)—

*(i) by striking ''Any'' and inserting ''any''; and*

*(ii) by striking the period at the end and inserting a semicolon.*

*(6) CORRECTION OF CONFUSING SUBDIVISION DESIGNATION.—Section 1716 of title 18, United States Code, is amended—*

*(A) in the first undesignated paragraph, by inserting ''(j)(1)'' before ''Whoever'';*

*(B) in the second undesignated paragraph—*

*(i) by striking ''not more than $10,000'' and inserting ''under this title''; and*

*(ii) by inserting ''(2)'' at the beginning of that paragraph;*

*(C) by inserting ''(3)'' at the beginning of the third undesignated paragraph; and*

*(D) by redesignating subsection (j) as subsection (k).*

*(7) PUNCTUATION CORRECTION IN SECTION 1091.—Section 1091(b)(1) of title 18, United States Code, is amended by striking ''subsection (a)(1),'' and inserting ''subsection (a)(1)''.*

*(8) PUNCTUATION CORRECTION IN SECTION 2311.—Section 2311 of title 18, United States Code, is amended by striking the period after ''carcasses thereof'' the second place that term appears and inserting a semicolon.*

*(9) SYNTAX CORRECTION.—Section 115(b)(2) of title 18, United States Code, is amended by striking '', attempted kidnapping, or conspiracy to kidnap of a person'' and inserting ''or attempted kidnapping of, or a conspiracy to kidnap, a person''.*

*(10) CORRECTING CAPITALIZATION IN SECTION 982.—Section 982(a)(8) of title 18, United States Code, is amended by striking ''Court'' and inserting ''court''.*

*(11) PUNCTUATION CORRECTIONS IN SECTION 1029.—Section 1029 of title 18, United States Code, is amended—*

*(A) in subsection (c)(1)(A)(ii), by striking ''(9),'' and inserting ''(9)''; and*

*(B) in subsection (e), by adding a semicolon at the end of paragraph (8).*

*(12) CORRECTIONS OF CONNECTORS AND PUNCTUATION IN SECTION 1030.—Section 1030 of title 18, United States Code, is amended—*

*(A) by inserting ''and'' at the end of subsection (c)(2)(B)(iii); and*

*(B) by striking the period at the end of subsection (e)(4)(I) and inserting a semicolon.*

*(13) CORRECTION OF PUNCTUATION IN SECTION 1032.—Section 1032(1) of title 18, United States Code, is amended by striking ''13,'' and inserting ''13''.*

*(14) CORRECTION OF PUNCTUATION IN SECTION 1345.—Section 1345(a)(1) of title 18, United States Code, is amended—*

*(A) in subparagraph (B), by striking '', or'' and inserting ''; or''; and*

*(B) in subparagraph (C), by striking the period and inserting a semicolon.*

*(15) CORRECTION OF PUNCTUATION IN SECTION 3612.—Section 3612(f)(2)(B) of title 18, United States Code, is amended by striking ''preceding.'' and inserting ''preceding''.*

*(16) CORRECTION OF INDENTATION IN CONTROLLED SUBSTANCES ACT.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by moving the margin of subparagraph (C) 2 ems to the left.*

*(c) ELIMINATION OF REDUNDANCIES.—*

*(1) ELIMINATION OF DUPLICATE AMENDMENTS.—Effective on the date of its enactment, paragraphs (1), (2), and (4) of section 601(b), paragraph (2) of section 601(d), paragraph (2) of section 601(f), paragraphs (1) and (2)(A) of section 601(j), paragraphs (1) and (2) of section 601(k), subsection (d) of section 602, paragraph (4) of section 604(b), subsection (r) of section 605, and paragraph (2) of section 607(j) of the Economic Espionage Act of 1996 are repealed.*

*(2) ELIMINATION OF EXTRA COMMA.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—*

*(A) by striking ''Code,,'' and inserting ''Code,''; and*

*(B) by striking ''services),,'' and inserting ''services),''.*

*(3) REPEAL OF SECTION GRANTING DUPLICATIVE AUTHORITY.—*

*(A) Section 3503 of title 18, United States Code, is repealed.*

*(B) The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by striking the item relating to section 3503.*

*(4) ELIMINATION OF OUTMODED REFERENCE TO PAROLE.—Section 929(b) of title 18, United States Code, is amended by striking the last sentence.*

*(d) CORRECTION OF OUTMODED FINE AMOUNTS.—*

*(1) IN TITLE 18, UNITED STATES CODE.—*

*(A) IN SECTION 492.—Section 492 of title 18, United States Code, is amended by striking ''not more than $100'' and inserting ''under this title''.*

*(B) IN SECTION 665.—Section 665(c) of title 18, United States Code, is amended by striking ''a fine of not more than $5,000'' and inserting ''a fine under this title''.*

*(C) IN SECTIONS 1924, 2075, 2113(b), AND 2236.—*

*(i) Section 1924(a) of title 18, United States Code, is amended by striking ''not more than $1,000,'' and inserting ''under this title''.*

*(ii) Sections 2075 and 2113(b) of title 18, United States Code, are each amended by striking ''not more than $1,000'' and inserting ''under this title''.*

*(iii) Section 2236 of title 18, United States Code, is amended by inserting ''under this title'' after ''warrant, shall be fined'', and by striking ''not more than $1,000''.*

*(D) IN SECTION 372 AND 752.—Sections 372 and 752(a) of title 18, United States Code, are each amended by striking ''not more than $5,000'' and inserting ''under this title''.*

*(E) IN SECTION 924(e)(1).—Section 924(e)(1) of title 18, United States Code, is amended by striking ''not more than $25,000'' and inserting ''under this title''.*

*(2) IN THE CONTROLLED SUBSTANCES ACT.—*

*(A) IN SECTION 401.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended—*

*(i) in paragraph (1), by striking ''and shall be fined not more than $10,000'' and inserting ''or fined under title 18, United States Code, or both''; and*

*(ii) in paragraph (2), by striking ''and shall be fined not more than $20,000'' and inserting ''or fined under title 18, United States Code, or both''.*

*(B) IN SECTION 402.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)) is amended—*

*(i) in subparagraph (A), by striking ''of not more than $25,000'' and inserting ''under title 18, United States Code''; and*

*(ii) in subparagraph (B), by striking ''of $50,000'' and inserting ''under title 18, United States Code''.*

*(C) IN SECTION 403.—Section 403(d) of the Controlled Substances Act (21 U.S.C. 843(d)) is amended—*

*(i) by striking ''of not more than $30,000'' each place that term appears and inserting ''under title 18, United States Code''; and*

*(ii) by striking ''of not more than $60,000'' each place it appears and inserting ''under title 18, United States Code''.*

*(e) CROSS REFERENCE CORRECTIONS.—*

*(1) SECTION 3664.—Section 3664(o)(1)(C) of title 18, United States Code, is amended by striking ''section 3664(d)(3)'' and inserting ''subsection (d)(5)''.*

*(2) CHAPTER 228.—Section 3592(c)(1) of title 18, United States Code, is amended by striking ''section 36'' and inserting ''section 37''.*

*(3) CORRECTING ERRONEOUS CROSS REFERENCE IN CONTROLLED SUBSTANCES ACT.—Section 511(a)(10) of the Controlled Substances Act (21 U.S.C. 881(a)(10)) is amended by striking ''1822 of the Mail Order Drug Paraphernalia Control Act'' and inserting ''422''.*

*(4) CORRECTION TO REFLECT CROSS REFERENCE CHANGE MADE BY OTHER LAW.—Effective on the date of its enactment, section 601(c)(3) of the Economic Espionage Act of 1996 is amended by striking ''247(d)'' and inserting ''247(e)''.*

*(5) TYPOGRAPHICAL AND TYPEFACE ERROR IN TABLE OF CHAPTERS.—The item relating to chapter 123 in the table of chapters at the beginning of part I of title 18, United States Code, is amended—*

*(A) by striking ''2271'' and inserting ''2721''; and*

*(B) so that the item appears in bold face type.*

*(6) SECTION 4104.—Section 4104(d) of title 18, United States Code, is amended by striking ''section 3653 of this title and rule 32(f) of'' and inserting ''section 3565 of this title and the applicable provisions of''.*

*(7) ERROR IN AMENDATORY LANGUAGE.—Effective on the date of its enactment, section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (111 Stat. 2436) is amended by striking ''Section 2401'' and inserting ''Section 2441''.*

*(8) ERROR IN CROSS REFERENCE TO COURT RULES.—The first sentence of section 3593(c) of title 18, United States Code, is amended by striking ''rule 32(c)'' and inserting ''rule 32''.*

*(9) SECTION 1836.—Section 1836 of title 18, United States Code, is amended—*

*(A) in subsection (a), by striking ''this section'' and inserting ''this chapter''; and*

*(B) in subsection (b), by striking ''this subsection'' and inserting ''this section''.*

*(10) CORRECTION OF ERRONEOUS CITE IN CHAPTER 119.—Section 2510(10) of title 18, United States Code, is amended by striking ''shall have'' and all that follows through ''United States Code;'' and inserting ''has the meaning given that term in section 3 of the Communications Act of 1934;''.*

*(11) ELIMINATION OF OUTMODED CITE IN SECTION 2339A.—Section 2339A(a) of title 18, United States Code, is amended by striking ''2332c,''.*

*(12) CORRECTION OF REFERENCES IN AMENDATORY LANGUAGE.—Effective the date of its enactment, section 115(a)(8)(B) of Public Law 105–119 is amended—*

*(A) in clause (i)—*

*(i) by striking ''at the end of'' and inserting ''following''; and*

*(ii) by striking ''paragraph'' the second place it appears and inserting ''subsection''; and*

*(B) in clause (ii), by striking ''subparagraph (A)'' and inserting ''clause (i)''.*

*(f) TABLES OF SECTIONS CORRECTIONS.—*

*(1) CONFORMING TABLE OF SECTIONS TO HEADING OF SECTION.—The item relating to section 1837 in the table of sections at the beginning of chapter 90 of title 18, United States Code, is amended by striking ''Conduct'' and inserting ''Applicability to conduct''.*

*(2) CONFORMING HEADING TO TABLE OF SECTIONS ENTRY.—The heading of section 1920 of title 18, United States Code, is amended by striking ''**Employee's**'' and inserting ''**Employees**''.*

***SEC. 4003. ADDITIONAL TECHNICALS.***

*(a) TITLE 18.—Title 18, United States Code, is amended—*

*(1) in section 922(t)(1)(C), by striking ''1028(d)(1)'' and inserting ''1028(d)'';*

*(2) in section 1005—*

*(A) in the first undesignated paragraph, by striking ''Act,,'' and inserting ''Act,''; and*

*(B) by inserting ''or'' at the end of the third undesignated paragraph;*

*(3) in section 1071, by striking ''fine of under this title'' and inserting ''fine under this title'';*

*(4) in section 1368(a), by inserting ''to'' after ''serious bodily injury'';*

*(5) in subsections (b)(1) and (c) of section 2252A, by striking ''paragraphs'' and inserting ''paragraph''; and*

*(6) in section 2254(a)(3), by striking the comma before the period at the end.*

*(b) TITLE 28.—Title 28, United States Code, is amended—*

*(1) in section 509(3), by striking the second period;*

(2) in section 526—

(A) in the heading, by striking ''**AND**'' before ''**TRUSTEES**''; and

(B) in subsection (a)(1), by striking the second comma after ''marshals'';

(3) in section 529(b)(2), as hereinbefore added, by striking the matter between ''services contract'' and ''made,'' and inserting ''services contract made,'';

(4) in section 534(a)(3), by inserting ''and'' after the semicolon;

(5) in the item relating to section 526 in the table of sections at the beginning of chapter 31, by striking ''and'' before ''trustees'';

(6) in the item relating to chapter 37 in the table of chapters at the beginning of part II, by inserting ''Service'' after ''Marshals'';

(7) in the item relating to section 532 in the table of sections at the beginning of chapter 33, by inserting ''the'' after ''of''; and

(8) in the item relating to section 537 in the table of sections at the beginning of chapter 33, by striking ''nature'' and inserting ''character''.

**SEC. 4004. REPEAL OF OUTMODED PROVISIONS.**

(a) Section 14 of title 18, United States Code, and the item relating thereto in the table of sections at the beginning of chapter 1 of title 18, United States Code, are repealed.

(b) Section 1261 of such title is amended—

(1) by striking ''(a) The Secretary'' and inserting ''The Secretary''; and

(2) by striking subsection (b).

(c) Section 1821 of such title is amended by striking '', the Canal Zone''.

(d) Section 3183 of such title is amended by striking ''or the Panama Canal Zone,''.

(e) Section 3241 of such title is amended by striking ''United States District Court for the Canal Zone and the''.

(f) Any section of any Act enacted on the antepenultimate day of November 2001, which section provides for any amendment to chapter 31 of title 28, United States Code, is hereby repealed.

**SEC. 4005. AMENDMENTS RESULTING FROM PUBLIC LAW 107–56.**

(a) MARGIN CORRECTIONS.—

(1) Section 2516(1) of title 18, United States Code, is amended by moving the left margin for subsection (q) 2 ems to the right.

(2) Section 2703(c)(1) of title 18, United States Code, is amended by moving the left margin of subparagraph (E) 2 ems to the left.

(3) Section 1030(a)(5) of title 18, United States Code, is amended by moving the left margin of subparagraph (B) 2 ems to the left.

(b) CORRECTION OF WRONGLY WORDED CLERICAL AMENDMENT.—Effective on the date of its enactment, section 223(c)(2) of Public Law 107–56 is amended to read as follows:

''(2) The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended by adding at the end the following new item:

''2712. Civil actions against the United States.''.

(c) CORRECTION OF ERRONEOUS PLACEMENT OF AMENDMENT LANGUAGE.—Effective on the date of its enactment, section 225 of Public Law 107–56 is amended—

(1) by striking ''after subsection (g)'' and inserting ''after subsection (h)''; and

(2) by redesignating the subsection added to section 105 of section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) as subsection (i).

(d) PUNCTUATION CORRECTIONS.—

(1) Section 1956(c)(6)(B) of title 18, United States Code, is amended by striking the period and inserting a semicolon.

(2) Effective on the date of its enactment, section 803(a) of Public Law 107–56 is amended by striking the close quotation mark and period that follows at the end of subsection (a) in the matter proposed to be inserted in title 18, United States Code, as a new section 2339.

(3) Section 1030(c)(3)(B) of title 18, United States Code, is amended by inserting a comma after ''(a)(4)''.

(e) ELIMINATION OF DUPLICATE AMENDMENT.—Effective on the date of its enactment, section 805 of Public Law 107–56 is amended by striking subsection (b).

(f) CORRECTION OF UNEXECUTABLE AMENDMENTS.—

(1) Effective on the date of its enactment, section 813(2) of Public Law 107–56 is amended by striking ''semicolon'' and inserting ''period''.

(2) Effective on the date of its enactment, section 815 of Public Law 107–56 is amended by inserting ''a'' before ''statutory authorization''.

(g) CORRECTION OF HEADING STYLE.—The heading for section 175b of title 18, United States Code, is amended to read as follows:

**''§ 175b. Possession by restricted persons''.**

**SEC. 4006. CROSS REFERENCE CORRECTION.**

Section 2339C(a)(1) of title 18, United States Code, is amended by striking ''described in subsection (c)'' and inserting ''described in subsection (b)''.

## TITLE V—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

**SEC. 5001. PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS.**

(a) STATE APPLICATIONS.—Section 503(a)(13)(A)(iii) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(13)(A)(iii)) is amended by striking ''or the National Association of Medical Examiners,'' and inserting '', the National Association of Medical Examiners, or any other nonprofit, professional organization that may be recognized within the forensic science community as competent to award such accreditation,''.

(b) FORENSIC SCIENCES IMPROVEMENT GRANTS.—Part BB of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797j et seq.) is amended—

(1) in section 2801, by inserting after ''States'' the following: '' and units of local government'';

(2) in section 2802—

(A) in the matter before paragraph (1), by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (1), to read as follows:

''(1) a certification that the State or unit of local government has developed a plan for forensic science laboratories under a program described in section 2804(a), and a specific description of the manner in which the grant will be used to carry out that plan;'';

(C) in paragraph (2), by inserting ''or appropriate certifying bodies'' before the semicolon; and

(D) in paragraph (3), by inserting ''for a State or local plan'' after ''program'';

(3) in section 2803(a)(2), by striking ''to States with'' and all that follows through the period and inserting ''for competitive awards to States and units of local government. In making awards under this part, the Attorney General shall consider the average annual number of part 1 violent crimes reported by each State to the Federal Bureau of Investigation for the 3 most recent calendar years for which data is available and consider the existing resources and current needs of the potential grant recipient.'';

(4) in section 2804—

(A) in subsection (a), by inserting ''or unit of local government'' after ''A State''; and

(B) in subsection (c)(1), by inserting ''(including grants received by units of local government within a State)'' after ''under this part''; and

(5) in section 2806(a)—

(A) in the matter before paragraph (1), by inserting ''or unit of local government'' after ''each State''; and

(B) in paragraph (1), by inserting before the semicolon the following: '', which shall include a comparison of pre-grant and post-grant forensic science capabilities''

(C) in paragraph (2), by striking ''and'' at the end;

(D) by redesignating paragraph (3) as paragraph (4); and

(E) by inserting after paragraph (2) the following:

''(3) an identification of the number and type of cases currently accepted by the laboratory; and''.

**SEC. 5002. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each of fiscal years 2002 through 2007—

(1) such sums as may be necessary for the Center for Domestic Preparedness of the Department of Justice in Anniston, Alabama;

(2) such sums as may be necessary for the Texas Engineering Extension Service of Texas A&M University;

(3) such sums as may be necessary for the Energetic Materials Research and Test Center of the New Mexico Institute of Mining and Technology;

(4) such sums as may be necessary for the Academy of Counterterrorist Education at Louisiana State University;

(5) such sums as may be necessary for the National Exercise, Test, and Training Center of the Department of Energy, located at the Nevada test site;

(6) such sums as may be necessary for the National Center for the Study of Counter-Terrorism and Cyber-Crime at Norwich University; and

(7) such sums as may be necessary for the Northeast Counterdrug Training Center at Fort Indiantown Gap, Pennsylvania.

## DIVISION C—IMPROVEMENTS TO CRIMINAL JUSTICE, CIVIL JUSTICE, IMMIGRATION, JUVENILE JUSTICE, AND INTELLECTUAL PROPERTY AND ANTITRUST LAWS

## TITLE I—CRIMINAL JUSTICE, CIVIL JUSTICE, AND IMMIGRATION

### Subtitle A—General Improvements

**SEC. 11001. LAW ENFORCEMENT TRIBUTE ACT.**

(a) SHORT TITLE.—This section may be cited as the ''Law Enforcement Tribute Act''.

(b) FINDINGS.—Congress finds the following:

(1) The well-being of all citizens of the United States is preserved and enhanced as a direct result of the vigilance and dedication of law enforcement and public safety personnel.

(2) More than 700,000 law enforcement officers, both men and women, at great risk to their personal safety, serve their fellow citizens as guardians of peace.

(3) Nationwide, 51 law enforcement officers were killed in the line of duty in 2000, according to statistics released by the Federal Bureau of Investigation. This number is an increase of 9 from the 1999 total of 42.

(4) In 1999, 112 firefighters died while on duty, an increase of 21 deaths from the previous year.

(5) Every year, 1 in 9 peace officers is assaulted, 1 in 25 is injured, and 1 in 4,400 is killed in the line of duty.

(6) In addition, recent statistics indicate that 83 officers were accidentally killed in the performance of their duties in 2000, an increase of 18 from the 65 accidental deaths in 1999.

(7) A permanent tribute is a powerful means of honoring the men and women who have served our Nation with distinction. However, many law enforcement and public safety agencies lack the resources to honor their fallen colleagues.

(c) PROGRAM AUTHORIZED.—From amounts made available to carry out this section, the Attorney General may make grants to States, units of local government, and Indian tribes to carry out programs to honor, through permanent tributes, men and women of the United States who were killed or disabled while serving as law enforcement or public safety officers.

(d) USES OF FUNDS.—Grants awarded under this section shall be distributed directly to the State, unit of local government, or Indian tribe, and shall be used for the purposes specified in subsection (c).

(e) $150,000 LIMITATION.—A grant under this section may not exceed $150,000 to any single recipient.

*(f) MATCHING FUNDS.—*

*(1) The Federal portion of the costs of a program provided by a grant under this section may not exceed 50 percent.*

*(2) Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement or public safety functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.*

*(g) APPLICATIONS.—To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.*

*(h) ANNUAL REPORT TO CONGRESS.—Not later than November 30 of each year, the Attorney General shall submit a report to the Congress regarding the activities carried out under this section. Each such report shall include, for the preceding fiscal year, the number of grants funded under this section, the amount of funds provided under those grants, and the activities for which those funds were used.*

*(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2002 through 2006.*

***SEC. 11002. DISCLOSURE OF GRAND JURY MATTERS RELATING TO MONEY LAUNDERING OFFENSES.***

*Section 3322(d)(1) of title 18, United States Code, is amended—*

*(1) in subparagraph (A), by striking ''or 1344; or'' and inserting ''1344, 1956, or 1957;'';*

*(2) in subparagraph (B), by inserting ''or'' after the semicolon; and*

*(3) by adding at the end the following:*

*''(C) any provision of subchapter II of chapter 53 of title 31, United States Code;''.*

***SEC. 11003. GRANT PROGRAM FOR STATE AND LOCAL DOMESTIC PREPAREDNESS SUPPORT.***

*(a) TECHNICAL CORRECTIONS.—*

*(1) OFFICE.—Section 1014(a) of the USA PATRIOT Act (Public Law 107–56) is amended by striking ''Office of State and Local Domestic Preparedness Support'' and inserting ''Office for Domestic Preparedness''.*

*(2) PERCENT.—Section 1014(c)(3) of the USA PATRIOT Act (Public Law 107–56) is amended by inserting ''not less than'' before ''0.25 percent''.*

*(b) ADDITIONAL USE OF GRANT AMOUNTS.—Section 1014(b) of the USA PATRIOT Act (Public Law 107–56) is amended by inserting at the end the following: ''In addition, grants under this section may be used to construct, develop, expand, modify, operate, or improve facilities to provide training or assistance to State and local first responders.''.*

***SEC. 11004. UNITED STATES SENTENCING COMMISSION ACCESS TO NCIC TERMINAL.***

*Section 534(a) of title 28, United States Code, is amended by striking paragraph (4) and inserting the following:*

*''(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, cities, and penal and other institutions.''.*

***SEC. 11005. DANGER PAY FOR FBI AGENTS.***

*Section 151 of the Foreign Relations Act, fiscal years 1990 and 1991 (5 U.S.C. 5928 note), is amended by inserting ''or Federal Bureau of Investigation'' after ''Drug Enforcement Administration''.*

***SEC. 11006. POLICE CORPS.***

*Subtitle A of title XX of the Violent Crime Control and Law Enforcement Act of 1994, the Police Corps Act (42 U.S.C. 14091 et seq.), is amended—*

*(1) in section 200106—*

*(A) in subsection (a)(2)—*

*(i) in subparagraph (A), by striking ''$7,500'' and inserting ''$10,000'';*

*(ii) in subparagraph (B), by striking ''$10,000'' and inserting ''$13,333''; and*

*(iii) in subparagraph (C), by striking ''$30,000'' and inserting ''$40,000''; and*

*(B) in subsection (b)(2)—*

*(i) in subparagraph (A), by striking ''$7,500'' and inserting ''$10,000'';*

*(ii) in subparagraph (B), by striking ''$10,000'' and inserting ''$13,333''; and*

*(iii) in subparagraph (C), by striking ''$30,000'' and inserting ''$40,000'';*

*(2) in section 200108, by striking ''$250'' and inserting ''$400'';*

*(3) in section 20110(2), by striking ''no more than 10 percent'' and inserting ''except with permission of the Director, no more than 25 percent''*

*(4) by striking section 200111; and*

*(5) in section 200112, by striking ''fiscal year 2002'' and inserting ''each of fiscal years 2002 through 2005''.*

***SEC. 11007. RADIATION EXPOSURE COMPENSATION TECHNICAL AMENDMENTS.***

*(a) IN GENERAL.—The Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended—*

*(1) in section 4(b)(1)(C), by inserting '', and that part of Arizona that is north of the Grand Canyon'' after ''Gila'';*

*(2) in section 4(b)(2)—*

*(A) by striking ''lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam),''; and*

*(B) by striking ''or liver (except if cirrhosis or hepatitis B is indicated).'' and inserting ''liver (except if cirrhosis or hepatitis B is indicated), or lung.'';*

*(3) in section 5(a)(1)(A)(ii)(I), by inserting ''or worked for at least 1 year during the period described under clause (i)'' after ''months of radiation'';*

*(4) in section 5(a)(2)(A), by striking ''an Atomic Energy Commission'' and inserting ''a'';*

*(5) in section 5(b)(5), by striking ''or lung cancer'';*

*(6) in section 5(c)(1)(B)(i), by striking ''or lung cancer'';*

*(7) in section 5(c)(2)(B)(i), by striking ''or lung cancer'';*

*(8) in section 6(e)—*

*(A) by striking ''The'' and inserting ''Except as otherwise authorized by law, the''; and*

*(B) by inserting '', mill, or while employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill'' after ''radiation in a uranium mine'';*

*(9) in section 6(i), by striking the second sentence;*

*(10) in section 6(k), by adding at the end the following: ''Not later than 180 days after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000, the Attorney General shall issue revised regulations to carry out this Act.'';*

*(11) in section 7, by amending subsection (b) to read as follows:*

*''(b) CHOICE OF REMEDIES.—No individual may receive more than 1 payment under this Act.''; and*

*(12) by adding at the end the following:*

***''SEC. 14. GAO REPORTS.***

*''(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Radiation Exposure Compensation Act Amendments of 2000, and every 18 months thereafter, the General Accounting Office shall submit a report to Congress containing a detailed accounting of the administration of this Act by the Department of Justice.*

*''(b) CONTENTS.—Each report submitted under this section shall include an analysis of—*

*''(1) claims, awards, and administrative costs under this Act; and*

*''(2) the budget of the Department of Justice relating to this Act.''.*

*(b) CONFORMING AMENDMENTS.—Section 3 of the Radiation Exposure Compensation Act Amendments of 2000 (Public Law 106–245) is amended by striking subsection (i).*

***SEC. 11008. FEDERAL JUDICIARY PROTECTION ACT OF 2002.***

*(a) SHORT TITLE.—This section may be cited as the ''Federal Judiciary Protection Act of 2002.''.*

*(b) ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES.—Section 111 of title 18, United States Code, is amended—*

*(1) in subsection (a), by striking ''three'' and inserting ''8''; and*

*(2) in subsection (b), by striking ''ten'' and inserting ''20''.*

*(c) INFLUENCING, IMPEDING, OR RETALIATING AGAINST A FEDERAL OFFICIAL BY THREATENING OR INJURING A FAMILY MEMBER.—Section 115(b)(4) of title 18, United States Code, is amended—*

*(1) by striking ''five'' and inserting ''10''; and*

*(2) by striking ''three'' and inserting ''6''.*

*(d) MAILING THREATENING COMMUNICATIONS.—Section 876 of title 18, United States Code, is amended—*

*(1) by designating the first 4 undesignated paragraphs as subsections (a) through (d), respectively;*

*(2) in subsection (c), as redesignated by paragraph (1), by adding at the end the following: ''If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.''; and*

*(3) in subsection (d), as redesignated by paragraph (1), by adding at the end the following: ''If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.''.*

*(e) AMENDMENT OF THE SENTENCING GUIDELINES FOR ASSAULTS AND THREATS AGAINST FEDERAL JUDGES AND CERTAIN OTHER FEDERAL OFFICIALS AND EMPLOYEES.—*

*(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.*

*(2) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—*

*(A) any expression of congressional intent regarding the appropriate penalties for the offense;*

*(B) the range of conduct covered by the offense;*

*(C) the existing sentences for the offense;*

*(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;*

*(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;*

*(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;*

*(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and*

*(H) any other factors that the Commission considers to be appropriate.*

**SEC. 11009. JAMES GUELFF AND CHRIS McCURLEY BODY ARMOR ACT OF 2002.**

*(a) SHORT TITLE.—This section may be cited as the ''James Guelff and Chris McCurley Body Armor Act of 2002''.*

*(b) FINDINGS.—Congress finds that—*

*(1) nationally, police officers and ordinary citizens are facing increased danger as criminals use more deadly weaponry, body armor, and other sophisticated assault gear;*

*(2) crime at the local level is exacerbated by the interstate movement of body armor and other assault gear;*

*(3) there is a traffic in body armor moving in or otherwise affecting interstate commerce, and existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;*

*(4) recent incidents, such as the murder of San Francisco Police Officer James Guelff by an assailant wearing 2 layers of body armor, a 1997 bank shoot out in north Hollywood, California, between police and 2 heavily armed suspects outfitted in body armor, and the 1997 murder of Captain Chris McCurley of the Etowah County, Alabama Drug Task Force by a drug dealer shielded by protective body armor, demonstrate the serious threat to community safety posed by criminals who wear body armor during the commission of a violent crime;*

*(5) of the approximately 7,200 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest;*

*(6) the Department of Justice has estimated that 25 percent of State and local police are not issued body armor;*

*(7) the Federal Government is well-equipped to grant local police departments access to body armor that is no longer needed by Federal agencies; and*

*(8) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to enact legislation to regulate interstate commerce that affects the integrity and safety of our communities.*

*(c) DEFINITIONS.—In this section:*

*(1) BODY ARMOR.—The term ''body armor'' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.*

*(2) LAW ENFORCEMENT AGENCY.—The term ''law enforcement agency'' means an agency of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.*

*(3) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.*

*(d) AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.—*

*(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title 18, United States Code) or drug trafficking crime (as defined in section 924(c) of title 18, United States Code) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor.*

*(2) SENSE OF CONGRESS.—It is the sense of Congress that any sentencing enhancement under this subsection should be at least 2 levels.*

*(e) PROHIBITION OF PURCHASE, USE, OR POSSESSION OF BODY ARMOR BY VIOLENT FELONS.—*

*(1) DEFINITION OF BODY ARMOR.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:*

*''(35) The term 'body armor' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.''.*

*(2) PROHIBITION.—*

*(A) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:*

***''§ 931. Prohibition on purchase, ownership, or possession of body armor by violent felons***

*''(a) IN GENERAL.—Except as provided in subsection (b), it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—*

*''(1) a crime of violence (as defined in section 16); or*

*''(2) an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.*

*''(b) AFFIRMATIVE DEFENSE.—*

*''(1) IN GENERAL.—It shall be an affirmative defense under this section that—*

*''(A) the defendant obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity; and*

*''(B) the use and possession by the defendant were limited to the course of such performance.*

*''(2) EMPLOYER.—In this subsection, the term 'employer' means any other individual employed by the defendant's business that supervises defendant's activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.''.*

*(B) CLERICAL AMENDMENT.—The analysis for chapter 44 of title 18, United States Code, is amended by adding at the end the following:*

*''931. Prohibition on purchase, ownership, or possession of body armor by violent felons.''.*

**SEC. 11010. PERSONS AUTHORIZED TO SERVE SEARCH WARRANT.**

*Section 2703 of title 18, United States Code, is amended by adding at the end the following:*

*''(g) PRESENCE OF OFFICER NOT REQUIRED.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.''.*

**SEC. 11011. STUDY ON REENTRY, MENTAL ILLNESS, AND PUBLIC SAFETY.**

*(a) STUDY.—The Attorney General shall commission a study of offenders, or a sampling of such offenders, with mental illness released from prison or jail in 2 or more jurisdictions, including at least 1 State or local and 1 Federal, to determine the extent to which participation in public benefit programs correlates with successful reentry and improved public safety.*

*(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives—*

*(1) a report detailing the results of the study conducted under subsection (a) with findings that address—*

*(A) the number of offenders with mental illness released from the prison or jail who qualify for medicaid, SSI, or SSDI;*

*(B) the number of offenders with mental illness who qualify for medicaid, SSI, or SSDI benefits and who are enrolled in these programs upon release from prison or jail; and*

*(C) how enrollment in medicaid, SSI, or SSDI affects—*

*(i) rearrest;*

*(ii) violation of condition(s) of release;*

*(iii) reincarceration;*

*(iv) rehospitalization;*

*(v) the length of time upon release from prison or jail time to the first contact with a mental health or substance abuse service; and*

*(vi) the number of contacts with a mental health or substance abuse services within the first 90 days of release; and*

*(2) any recommendations.*

*(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as necessary to conduct the study and issue the report required by this section.*

**SEC. 11012. TECHNICAL AMENDMENT TO OMNIBUS CRIME CONTROL ACT.**

*Section 802(b) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended in the first sentence by striking ''U,'' and inserting ''T,''.*

**SEC. 11013. DEBT COLLECTION IMPROVEMENT.**

*(a) IN GENERAL.—Notwithstanding section 3302 of title 31, United States Code, or any other statute affecting the crediting of collections, the Attorney General may credit, as an offsetting collection, to the Department of Justice Working Capital Fund up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities of the Department of Justice. Such amounts in the Working Capital Fund shall remain available until expended and shall be subject to the terms and conditions of that fund, and shall be used first, for paying the costs of processing and tracking civil and criminal debt-collection litigation, and, thereafter, for financial systems and for debt-collection-related personnel, administrative, and litigation expenses.*

*(b) CONFORMING AMENDMENT.—Section 108 of Public Law 103–121 is repealed.*

**SEC. 11014. SCAAP AUTHORIZATION.**

*Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking '', of which'' and all that follows through ''2000'' and inserting ''in fiscal years 2003 and 2004''.*

**SEC. 11015. USE OF ANNUITY BROKERS IN STRUCTURED SETTLEMENTS.**

*(a) ESTABLISHMENT AND TRANSMISSION OF LIST OF APPROVED ANNUITY BROKERS.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys.*

*(b) AUTHORITY TO SELECT ANNUITY BROKER FOR STRUCTURED SETTLEMENTS.—In any structured settlement that is not negotiated exclusively through the Civil Division of the Department of Justice, the United States Attorney (or his designee) involved in any settlement negotiations shall have the exclusive authority to select an annuity broker from the list of such brokers established by the Attorney General, provided that all documents related to any settlement comply with Department of Justice requirements.*

**SEC. 11016. INS PROCESSING FEES.**

*The Immigration and Nationality Act of 1953 is amended—*

*(1) in section 344(c) (8 U.S.C. 1455(c)), by striking ''All'' and inserting ''Except as provided by section 286(q)(2) or any other law, all''; and*

*(2) in section 286(q)(2) (8 U.S.C. 1356(q)(2)), by inserting '', including receipts for services performed in processing forms I–94, I–94W, and I–68, and other similar applications processed at land border ports of entry,'' after ''subsection''.*

**SEC. 11017. UNITED STATES PAROLE COMMISSION EXTENSION.**

*(a) EXTENSION OF THE PAROLE COMMISSION.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 (98 Stat. 2032) as such section relates to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to ''fifteen years'' or ''fifteen-year period'' shall be deemed to be a reference to ''eighteen years'' or ''eighteen-year period'', respectively.*

*(b) STUDY BY ATTORNEY GENERAL.—The Attorney General, not later than 60 days after the enactment of this Act, should establish a committee within the Department of Justice to evaluate the merits and feasibility of transferring the United States Parole Commission's functions regarding the supervised release of District of Columbia offenders to another entity or entities outside the Department of Justice. This committee should consult with the District of Columbia Superior Court and the District of Columbia Court Services and Offender Supervision Agency, and should report its findings and recommendations to the Attorney General. The Attorney General, in turn, should submit to Congress, not later than 18 months after the enactment of this Act, a long-term plan for the most effective and cost-efficient assignment of responsibilities relating to the supervised release of District of Columbia offenders.*

*(c) SERVICE AS COMMISSIONER.—Notwithstanding section 1 of this legislation, the final clause of the fourth sentence of section 4202 of title 18, United States Code, which begins ''except that'', shall not apply to a person serving as a Commissioner of the United States Parole Commission when this Act takes effect.*

**SEC. 11018. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.**

*(a) INCREASE IN NUMERICAL LIMITATION ON WAIVERS REQUESTED BY STATES.—Section 214(l)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(B)) is amended by striking ''20;'' and inserting ''30;''.*

*(b) EXTENSION OF DEADLINE.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) is amended by striking ''2002.'' and inserting ''2004.''.*

*(c) TECHNICAL CORRECTION.—Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) is amended by striking ''214(k):'' and inserting ''214(l):''.*

*(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if this Act were enacted on May 31, 2002.*

**SEC. 11019. PRETRIAL DISCLOSURE OF EXPERT TESTIMONY RELATING TO DEFENDANT'S MENTAL CONDITION.**

*(a) MODIFICATION OF PROPOSED AMENDMENTS.—The proposed amendments to the Federal Rules of Criminal Procedure that are embraced by an order entered by the Supreme Court of the United States on April 29, 2002, shall take effect on December 1, 2002, as otherwise provided by law, but with the amendments made in subsection (b).*

*(b) PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.—Rule 16 of the Federal Rules of Criminal Procedure is amended—*

*(1) in subdivision (a)(1), by amending subparagraph (G) to read as follows:*

*''(G) EXPERT WITNESSES.—At the defendant's request, the Government shall give to the defendant a written summary of any testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the Government requests discovery under subdivision (b)(1)(C)(ii) and the defendant complies, the Government shall, at the defendant's request, give to the defendant a written summary of testimony that the Government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial on the issue of the defendant's medical condition. The summary provided under this subparagraph shall describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.''; and*

*(2) in subdivision (b)(1), by amending subparagraph (C) to read as follows:*

*''(C) EXPERT WITNESSES.—The defendant shall, at the Government's request, give to the Government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial, if—*

*''(i) the defendant requests disclosure under subdivision (a)(1)(G) and the government complies; or*

*''(ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.*

*This summary shall describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications''.*

*(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on December 1, 2002.*

**SEC. 11020. MULTIPARTY, MULTIFORUM TRIAL JURISDICTION ACT OF 2002.**

*(a) SHORT TITLE.—This section may be cited as the ''Multiparty, Multiforum Trial Jurisdiction Act of 2002''.*

*(b) MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS.—*

*(1) BASIS OF JURISDICTION.—*

*(A) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:*

***''§ 1369. Multiparty, multiforum jurisdiction***

*''(a) IN GENERAL.—The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if—*

*''(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;*

*''(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or*

*''(3) substantial parts of the accident took place in different States.*

*''(b) LIMITATION OF JURISDICTION OF DISTRICT COURTS.—The district court shall abstain from hearing any civil action described in subsection (a) in which—*

*''(1) the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens; and*

*''(2) the claims asserted will be governed primarily by the laws of that State.*

*''(c) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—*

*''(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;*

*''(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;*

*''(3) the term 'injury' means—*

*''(A) physical harm to a natural person; and*

*''(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;*

*''(4) the term 'accident' means a sudden accident, or a natural event culminating in an accident, that results in death incurred at a discrete location by at least 75 natural persons; and*

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

*''(d) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.*

*''(e) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.''.*

*(B) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:*

*''1369. Multiparty, multiforum jurisdiction.''.*

*(2) VENUE.—Section 1391 of title 28, United States Code, is amended by adding at the end the following:*

*''(g) A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.''.*

*(3) REMOVAL OF ACTIONS.—Section 1441 of title 28, United States Code, is amended—*

*(A) in subsection (e) by striking ''(e) The court to which such civil action is removed'' and inserting ''(f) The court to which a civil action is removed under this section''; and*

*(B) by inserting after subsection (d) the following new subsection:*

*''(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—*

*''(A) the action could have been brought in a United States district court under section 1369 of this title; or*

*''(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.*

*The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.*

*''(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in*

*the interest of justice, the action should be retained for the determination of damages.*

*''(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.*

*''(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.*

*''(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.*

*''(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.''.*

*(4) SERVICE OF PROCESS.—*

*(A) OTHER THAN SUBPOENAS.—(i) Chapter 113 of title 28, United States Code, is amended by adding at the end the following new section:*

***''§ 1697. Service in multiparty, multiforum actions***

*''When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.''.*

*(ii) The table of sections at the beginning of chapter 113 of title 28, United States Code, is amended by adding at the end the following new item:*

*''1697. Service in multiparty, multiforum actions.''.*

*(B) SERVICE OF SUBPOENAS.—(i) Chapter 117 of title 28, United States Code, is amended by adding at the end the following new section:*

***''§ 1785. Subpoenas in multiparty, multiforum actions***

*''When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.''.*

*(ii) The table of sections at the beginning of chapter 117 of title 28, United States Code, is amended by adding at the end the following new item:*

*''1785. Subpoenas in multiparty, multiforum actions.''.*

*(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of the enactment of this Act.*

***SEC. 11021. ADDITIONAL PLACE OF HOLDING COURT IN THE SOUTHERN DISTRICT OF OHIO.***

*Section 115(b)(2) of title 28, United States Code, is amended by inserting ''St. Clairsville,'' after ''Columbus,''.*

***SEC. 11022. DIRECT SHIPMENT OF WINE.***

*(a) CONDITIONS FOR TRANSPORTING CERTAIN WINE.—During any period in which the Federal Aviation Administration has in effect restrictions on airline passengers to ensure safety, the direct shipment of wine shall be permitted from States where wine is purchased from a winery, to another State or the District of Columbia, if—*

*(1) the wine was purchased while the purchaser was physically present at the winery;*

*(2) the purchaser of the wine provided the winery verification of legal age to purchase alcohol;*

*(3) the shipping container in which the wine is shipped is marked to require an adult's signature upon delivery;*

*(4) the wine is for personal use only and not for resale; and*

*(5) the purchaser could have carried the wine lawfully into the State or the District of Columbia to which the wine is shipped.*

*(b) VIOLATIONS.—If any person fails to meet any of the conditions under subsection (a), the attorney general of any State may bring a civil action under the same terms as those set out in section 2 of the Act entitled ''An Act divesting intoxicating liquors of their interstate character in certain cases'', approved March 1, 1913 (commonly known as the ''Webb-Kenyon Act'') (27 U.S.C. 122a).*

*(c) REPORT.—Not later than 2 years after the date of enactment of this Act, and at 2-year intervals thereafter, the Attorney General of the United States, in consultation with the Administrator of the Federal Aviation Administration, shall prepare and submit to the Committee on the Judiciary of the Senate and to the Committee on the Judiciary of the House of Representatives a report on the implementation of this section.*

***SEC. 11023. WEBSTER COMMISSION IMPLEMENTATION REPORT.***

*(a) IMPLEMENTATION PLAN.—Not later than 6 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a plan for implementation of the recommendations of the Commission for Review of FBI Security Programs, dated March 31, 2002, including the costs of such implementation.*

*(b) ANNUAL REPORTS.—On the date that is 1 year after the submission of the plan described in subsection (a), and for 2 years thereafter, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a report on the implementation of such plan.*

*(c) APPROPRIATE COMMITTEES OF CONGRESS.—For purposes of this section, the term ''appropriate Committees of Congress'' means—*

*(1) the Committees on the Judiciary of the Senate and the House of Representatives;*

*(2) the Committees on Appropriations of the Senate and the House of Representatives;*

*(3) the Select Committee on Intelligence of the Senate; and*

*(4) the Permanent Select Committee on Intelligence of the House of Representatives.*

***SEC. 11024. FBI POLICE.***

*(a) IN GENERAL.—Chapter 33 of title 28, United States Code, is amended by adding at the end the following:*

***''§ 540C. FBI Police***

*''(a) DEFINITIONS.—In this section:*

*''(1) DIRECTOR.—The term ''Director'' means the Director of the Federal Bureau of Investigation.*

*''(2) FBI BUILDINGS AND GROUNDS.—*

*''(A) IN GENERAL.—The term ''FBI buildings and grounds'' means—*

*''(i) the whole or any part of any building or structure which is occupied under a lease or otherwise by the Federal Bureau of Investigation and is subject to supervision and control by the Federal Bureau of Investigation;*

*''(ii) the land upon which there is situated any building or structure which is occupied wholly by the Federal Bureau of Investigation; and*

*''(iii) any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the Federal Bureau of Investigation.*

*''(B) INCLUSION.—The term ''FBI buildings and grounds'' includes adjacent streets and sidewalks not to exceed 500 feet from such property.*

*''(3) FBI POLICE.—The term ''FBI police'' means the permanent police force established under subsection (b).*

*''(b) ESTABLISHMENT OF FBI POLICE; DUTIES.—*

*''(1) IN GENERAL.—Subject to the supervision of the Attorney General, the Director may establish a permanent police force, to be known as the FBI police.*

*''(2) DUTIES.—The FBI police shall perform such duties as the Director may prescribe in connection with the protection of persons and property within FBI buildings and grounds.*

*''(3) UNIFORMED REPRESENTATIVE.—The Director, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the Federal Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.*

*''(4) AUTHORITY.—*

*''(A) IN GENERAL.—In accordance with regulations prescribed by the Director and approved by the Attorney General, the FBI police may—*

*''(i) police the FBI buildings and grounds for the purpose of protecting persons and property;*

*''(ii) in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States, including the laws of the District of Columbia;*

*''(iii) carry firearms as may be required for the performance of duties;*

*''(iv) prevent breaches of the peace and suppress affrays and unlawful assemblies; and*

*''(v) hold the same powers as sheriffs and constables when policing FBI buildings and grounds.*

*''(B) EXCEPTION.—The authority and policing powers of FBI police under this paragraph shall not include the service of civil process.*

*''(5) PAY AND BENEFITS.—*

*''(A) IN GENERAL.—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary schedule, pay provisions, and benefits applicable to members of the United States Secret Service Uniformed Division.*

*''(B) APPLICATION.—Pay and benefits for the FBI police under subparagraph (A)—*

*''(i) shall be established by regulation;*

*''(ii) shall apply with respect to pay periods beginning after January 1, 2003; and*

*''(iii) shall not result in any decrease in the rates of pay or benefits of any individual.*

*''(c) AUTHORITY OF METROPOLITAN POLICE FORCE.—This section does not affect the authority of the Metropolitan Police Force of the District of Columbia with respect to FBI buildings and grounds.''.*

*(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 33 of title 28, United States Code, is amended by adding at the end the following new item:*

*''540C. FBI police.''.*

***SEC. 11025. REPORT ON FBI INFORMATION MANAGEMENT AND TECHNOLOGY.***

*(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Director of the Federal Bureau of Investigation, with appropriate comments from other components of the Department of Justice, shall submit to Congress a report on the information management and technology programs of the Federal Bureau of Investigation including recommendations for any legislation that may be necessary to enhance the effectiveness of those programs.*

*(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall provide—*

*(1) an analysis and evaluation of whether authority for waiver of any provision of procurement law (including any regulation implementing such a law) is necessary to expeditiously and cost-effectively acquire information*

*technology to meet the unique needs of the Federal Bureau of Investigation to improve its investigative operations in order to respond better to national law enforcement, intelligence, and counterintelligence requirements;*

*(2) the results of the studies and audits conducted by the Strategic Management Council and the Inspector General of the Department of Justice to evaluate the information management and technology programs of the Federal Bureau of Investigation, including systems, policies, procedures, practices, and operations; and*

*(3) a plan for improving the information management and technology programs of the Federal Bureau of Investigation.*

*(c) RESULTS.—The results provided under subsection (b)(2) shall include an evaluation of—*

*(1) information technology procedures and practices regarding procurement, training, and systems maintenance;*

*(2) record keeping policies, procedures, and practices of the Federal Bureau of Investigation, focusing particularly on how information is inputted, stored, managed, utilized, and shared within the Federal Bureau of Investigation;*

*(3) how information in a given database is related or compared to, or integrated with, information in other technology databases within the Federal Bureau of Investigation;*

*(4) the effectiveness of the existing information technology infrastructure of the Federal Bureau of Investigation in supporting and accomplishing the overall mission of the Federal Bureau of Investigation;*

*(5) the management of information technology projects of the Federal Bureau of Investigation, focusing on how the Federal Bureau of Investigation—*

*(A) selects its information technology projects;*

*(B) ensures that projects under development deliver benefits; and*

*(C) ensures that completed projects deliver the expected results; and*

*(6) the security and access control techniques for classified and sensitive but unclassified information systems in the Federal Bureau of Investigation.*

*(d) CONTENTS OF PLAN.—The plan provided under subsection (b)(3) shall include consideration of, among other things—*

*(1) to what extent appropriate key technology management positions in the Federal Bureau of Investigation should be filled by personnel with experience in the commercial sector;*

*(2) how access to the most sensitive information can be audited in such a manner that suspicious activity is subject to near contemporaneous security review;*

*(3) how critical information systems can employ a public key infrastructure to validate both users and recipients of messages or records;*

*(4) how security features can be tested to meet national information systems security standards;*

*(5) which employees in the Federal Bureau of Investigation should receive instruction in records and information management policies and procedures relevant to their positions and how frequently they should receive that instruction;*

*(6) whether and to what extent a reserve should be established for research and development to guide strategic information management and technology investment decisions;*

*(7) whether administrative requirements for software purchases under $2,000,000 are necessary and could be eliminated;*

*(8) whether the Federal Bureau of Investigation should contract with an expert technology partner to provide technical support for the information technology procurement for the Federal Bureau of Investigation;*

*(9) whether procedures should be implemented to permit procurement of products and services through contracts of other agencies, as necessary; and*

*(10) whether a systems integration and test center should be established, with the participation of field personnel, to test each series of information systems upgrades or application changes before their operational deployment to confirm that they meet proper requirements.*

***SEC. 11026. GAO REPORT ON CRIME STATISTICS REPORTING.***

*(a) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the issue of how statistics are reported and used by Federal law enforcement agencies.*

*(b) CONTENTS.—The report submitted under subsection (a) shall—*

*(1) identify the current regulations, procedures, internal policies, or other conditions that allow the investigation or arrest of an individual to be claimed or reported by more than 1 Federal or State agency charged with law enforcement responsibility;*

*(2) identify and examine the conditions that allow the investigation or arrest of an individual to be claimed or reported by the Offices of Inspectors General and any other Federal agency charged with law enforcement responsibility;*

*(3) examine the statistics reported by Federal law enforcement agencies, and document those instances in which more than 1 agency, bureau, or office claimed or reported the same investigation or arrest during the years 1998 through 2001;*

*(4) examine the issue of Federal agencies simultaneously claiming arrest credit for in-custody situations that have already occurred pursuant to a State or local agency arrest situation during the years 1998 through 2001;*

*(5) examine the issue of how such statistics are used for administrative and management purposes;*

*(6) set forth a comprehensive definition of the terms ''investigation'' and ''arrest'' as those terms apply to Federal agencies charged with law enforcement responsibilities; and*

*(7) include recommendations, that when implemented, would eliminate unwarranted and duplicative reporting of investigation and arrest statistics by all Federal agencies charged with law enforcement responsibilities.*

*(c) FEDERAL AGENCY COMPLIANCE.—Federal law enforcement agencies shall comply with requests made by the General Accounting Office for information that is necessary to assist in preparing the report required by this section.*

***SEC. 11027. CRIME-FREE RURAL STATES GRANTS.***

*(a) SHORT TITLE.—This section may be cited as the ''Crime-Free Rural States Act of 2002''.*

*(b) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting after part FF the following new part:*

***''PART GG—CRIME FREE RURAL STATE GRANTS***

***''SEC. 2985. GRANT AUTHORITY.***

*''The Attorney General shall award grants to rural State criminal justice agencies, Byrne agencies, or other agencies as designated by the Governor of that State and approved by the Attorney General, to develop rural States' capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.*

***''SEC. 2986. USE OF FUNDS.***

*''(a) IN GENERAL.—A capacity building grant shall be used to develop a statewide strategic plan as described in section 2987 to prevent and reduce crime, violence, and substance abuse.*

*''(b) PERMISSIVE USE.—A rural State may also use its grant to provide training and technical assistance to communities and promote innovation in the development of policies, technologies, and programs to prevent and reduce crime.*

*''(c) DATA COLLECTION.—A rural State may use up to 5 percent of the grant to assist grant recipients in collecting statewide data related to the costs of crime, violence, and substance abuse for purposes of supporting the statewide strategic plan.*

***''SEC. 2987. STATEWIDE STRATEGIC PREVENTION PLAN.***

*''(a) IN GENERAL.—A statewide strategic prevention plan shall be used by the rural State to assist local communities, both directly and through existing State programs and services, in building comprehensive, strategic, and innovative approaches to reducing crime, violence, and substance abuse based on local conditions and needs.*

*''(b) GOALS.—The plan must contain statewide long-term goals and measurable annual objectives for reducing crime, violence, and substance abuse.*

*''(c) ACCOUNTABILITY.—The rural State shall be required to develop and report in its plan relevant performance targets and measures for the goals and objectives to track changes in crime, violence, and substance abuse.*

*''(d) CONSULTATION.—The rural State shall form a State crime free communities commission that includes representatives of State and local government, and community leaders who will provide advice and recommendations on relevant community goals and objectives, and performance targets and measures.*

***''SEC. 2988. REQUIREMENTS.***

*''(a) TRAINING AND TECHNICAL ASSISTANCE.—The rural State shall provide training and technical assistance, including through such groups as the National Crime Prevention Council, to assist local communities in developing Crime Prevention Plans that reflect statewide strategic goals and objectives, and performance targets and measures.*

*''(b) REPORTS.—The rural State shall provide a report on its statewide strategic plan to the Attorney General, including information about—*

*''(1) involvement of relevant State-level agencies to assist communities in the development and implementation of their Crime Prevention Plans;*

*''(2) support for local applications for Community Grants; and*

*''(3) community progress toward reducing crime, violence, and substance abuse.*

*''(c) CERTIFICATION.—Beginning in the third year of the program, States must certify that the local grantee's project funded under the community grant is generally consistent with statewide strategic goals and objectives, and performance targets and measures.*

***''SEC. 2989. AUTHORIZATION OF APPROPRIATIONS.***

*''There are authorized to be appropriated $10,000,000 to carry out this part for each of fiscal years 2003, 2004, and 2005.''.*

*(c) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the matter relating to part FF the following:*

*''PART GG—CRIME FREE RURAL STATE GRANTS*

*''Sec. 2985. Grant authority.*
*''Sec. 2986. Use of funds.*
*''Sec. 2987. Statewide strategic prevention plan.*
*''Sec. 2988. Requirements.*
*''Sec. 2989. Authorization of appropriations.''.*

***SEC. 11028. MOTOR VEHICLE FRANCHISE CONTRACT DISPUTE RESOLUTION PROCESS.***

*(a) ELECTION OF ARBITRATION.—*

*(1) DEFINITIONS.—For purposes of this subsection—*

*(A) the term ''motor vehicle'' has the meaning given such term in section 30102(6) of title 49 of the United States Code; and*

*(B) the term ''motor vehicle franchise contract'' means a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer's motor vehicles.*

*(2) CONSENT REQUIRED.—Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy.*

*(3) EXPLANATION REQUIRED.—Notwithstanding any other provision of law, whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties to such contract with a written explanation of the factual and legal basis for the award.*

*(b) APPLICATION.—Subsection (a) shall apply to contracts entered into, amended, altered, modified, renewed, or extended after the date of the enactment of this Act.*

***SEC. 11029. HOLDING COURT FOR THE SOUTHERN DISTRICT OF IOWA.***

*Notwithstanding any other provision of law, during the period beginning on January 1, 2003, through July 1, 2005, the United States District Court for the Southern District of Iowa may—*

*(1) with the consent of the parties in any case filed in the Eastern Division or the Davenport Division of the Southern District of Iowa, hold court on that case in Rock Island, Illinois; and*

*(2) summon jurors from the Southern District of Iowa to serve in any case described under paragraph (1).*

***SEC. 11030. POSTHUMOUS CITIZENSHIP RESTORATION.***

*(a) SHORT TITLE.—This section may be cited as the ''Posthumous Citizenship Restoration Act of 2002''.*

*(b) DEADLINE EXTENSION.—Section 329A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1440–1(c)(1)(A)) is amended by striking ''this section,'' and inserting ''the Posthumous Citizenship Restoration Act of 2002,''.*

***SEC. 11030A. EXTENSION OF H–1B STATUS FOR ALIENS WITH LENGTHY ADJUDICATIONS.***

*(a) EXEMPTION FROM LIMITATION.—Section 106(a) of American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1184 note) is amended to read as follows:*

*''(a) EXEMPTION FROM LIMITATION.—The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C.1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:*

*''(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. 1153(b)).*

*''(2) A petition described in section 204(b) of such Act (3 U. S.C. 1154(b)) to accord the alien a status under section 203(b) of such Act.''.*

*(b) EXTENSION OF H–1B WORKER STATUS.—Section 106(b) of American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1184 note) is amended to read as follows:*

*''(b) EXTENSION OF H–1B WORKER STATUS.—The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—*

*''(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;*

*''(2) to deny the petition described in subsection (a)(2); or*

*''(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.''.*

***SEC. 11030B. APPLICATION FOR NATURALIZATION BY ALTERNATIVE APPLICANT IF CITIZEN PARENT HAS DIED.***

*Section 322(a) of the Immigration and Nationality Act (8 U.S.C. 1433(a)) is amended—*

*(1) in the matter preceding paragraph (1)—*

*(A) by inserting ''(or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian)'' after ''citizen of the United States''; and*

*(B) by striking ''such parent'' and inserting ''such applicant'';*

*(2) in paragraph (1), by inserting ''(or, at the time of his or her death, was)'' after ''parent'';*

*(3) in paragraph (2)—*

*(A) in subparagraph (A), by inserting ''(or, at the time of his or her death, had)'' after ''has''; and*

*(B) in subparagraph (B), by inserting ''(or, at the time of his or her death, had)'' after ''has'' the first place such term appears;*

*(4) by amending paragraph (4), to read as follows:*

*''(4) The child is residing outside of the United States in the legal and physical custody of the applicant (or, if the citizen parent is deceased, an individual who does not object to the application).''; and*

*(5) by adding at the end the following:*

*''(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.''.*

***Subtitle B—EB–5 Amendments***

***CHAPTER 1—IMMIGRATION BENEFITS***

***SEC. 11031. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.***

*(a) IN GENERAL.—In lieu of the provisions of section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case of an eligible alien described in subsection (b)(1).*

*(b) ELIGIBLE ALIENS DESCRIBED.—*

*(1) IN GENERAL.—An alien is an eligible alien described in this subsection if the alien—*

*(A) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;*

*(B) pursuant to such approval, obtained the status of an alien entrepreneur with permanent resident status on a conditional basis described in section 216A of such Act (8 U.S.C. 1186b); and*

*(C) timely filed, in accordance with section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) and before the date of the enactment of this Act, a petition requesting the removal of such conditional basis.*

*(2) REOPENING PETITIONS PREVIOUSLY DENIED.—*

*(A) IN GENERAL.—In the case of a petition described in paragraph (1)(C) that was denied under section 216A(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(C)) before the date of the enactment of this Act, upon a motion to reopen such petition filed by the eligible alien not later than 60 days after such date, the Attorney General shall make determinations on such petition pursuant to subsection (c).*

*(B) PETITIONERS ABROAD.—In the case of such an eligible alien who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain the determinations under subsection (c), unless the Attorney General finds that—*

*(i) the alien is inadmissible or deportable on any ground; or*

*(ii) the petition described in paragraph (1)(C) was denied on the ground that it contains a material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise.*

*(C) DEPORTATION OR REMOVAL PROCEEDINGS.—In the case of such an eligible alien who was placed in deportation or removal proceedings by reason of the denial of the petition described in paragraph (1)(C), a motion to reopen filed under subparagraph (A) shall be treated as a motion to reopen such proceedings. The Attorney General shall grant such motion notwithstanding any time and number limitations imposed by law on motions to reopen such proceedings, except that the scope of any proceeding reopened on this basis shall be limited to whether any order of deportation or removal should be vacated, and the alien granted the status of an alien lawfully admitted for permanent residence (unconditionally or on a conditional basis), by reason of the determinations made under subsection (c). An alien who is inadmissible or deportable on any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).*

*(c) DETERMINATIONS ON PETITIONS.—*

*(1) INITIAL DETERMINATION.—*

*(A) IN GENERAL.—With respect to each eligible alien described in subsection (b)(1), the Attorney General shall make a determination, not later than 180 days after the date of the enactment of this Act, whether—*

*(i) the petition described in subsection (b)(1)(C) contains any material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation);*

*(ii) subject to subparagraphs (B) and (C), such enterprise created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on any of the dates described in subparagraph (D); and*

*(iii) on any of the dates described in subparagraph (D), the alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).*

*(B) INVESTMENT UNDER PILOT IMMIGRATION PROGRAM.—For purposes of subparagraph (A)(ii), an investment that satisfies the requirements of section 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), as in effect on the date of the enactment of this Act, shall be deemed to satisfy the requirements of such subparagraph.*

*(C) EXCEPTION FOR TROUBLED BUSINESSES.—In the case of an eligible alien who has made a capital investment in a troubled business (as defined in 8 CFR 204.6(e), as in effect on the date of the enactment of this Act), in lieu of the determination under subparagraph (A)(ii), the Attorney General shall determine whether the number of employees of the business, as measured on any of the dates described in subparagraph (D), is at no less than the pre-investment level.*

*(D) DATES.—The dates described in this subparagraph are the following:*

*(i) The date on which the petition described in subsection (b)(1)(C) is filed.*

*(ii) 6 months after the date described in clause (i).*

*(iii) The date on which the determination under subparagraph (A) or (C) is made.*

*(E) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (A), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.*

*(F) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—*

*(i) NOTICE.—If the Attorney General renders an adverse determination with respect to clause (i), (ii), or (iii) of subparagraph (A), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.*

*(ii) CONTINUATION OF CONDITIONAL BASIS IF CERTAIN ADVERSE DETERMINATIONS.—If the Attorney General renders an adverse determination with respect to clause (ii) or (iii) of subparagraph (A), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) for a 2-year period.*

*(iii) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General renders an adverse determination with respect to subparagraph (A)(i), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).*

*(iv) ADMINISTRATIVE AND JUDICIAL REVIEW.—An alien may seek administrative review of an adverse determination made under subparagraph (A) by filing a petition for such review with the Board of Immigration Appeals. If the Board of Immigration Appeals denies the petition, the alien may seek judicial review. The procedures for judicial review under this clause shall be the same as the procedures for judicial review of a final order of removal under section 242(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(1)). During the period in which an administrative or judicial appeal under this clause is pending, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).*

*(2) SECOND DETERMINATION.—*

*(A) AUTHORIZATION TO CONSIDER INVESTMENTS IN OTHER COMMERCIAL ENTERPRISES.—In determining under this paragraph whether to remove a conditional basis continued under paragraph (1)(F)(ii) with respect to an alien, the Attorney General shall consider any capital investment made by the alien in a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether that investment was made before or after the determinations under paragraph (1) and regardless of whether the commercial enterprise is the same as that considered in the determinations under such paragraph, if facts and information with respect to the investment and the enterprise are included in the petition submitted under subparagraph (B).*

*(B) PETITION.—In order for a conditional basis continued under paragraph (1)(F)(ii) for an eligible alien (and the alien's spouse and children) to be removed, the alien must submit to the Attorney General, during the period described in subparagraph (C), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) which the alien desires to have considered under this paragraph, regardless of whether such enterprise was created before or after the determinations made under paragraph (1).*

*(C) PERIOD FOR FILING PETITION.—*

*(i) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in clause (ii), the petition under subparagraph (B) must be filed during the 90-day period before the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.*

*(ii) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in clause (i).*

*(D) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION.—*

*(i) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under paragraph (1)(F)(ii), if no petition is filed with respect to the alien in accordance with subparagraph (B), the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.*

*(ii) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated under clause (i), the burden of proof shall be on the alien to establish compliance with subparagraph (B).*

*(E) DETERMINATIONS AFTER PETITION.—If a petition is filed by an eligible alien in accordance with subparagraph (B), the Attorney General shall make a determination, within 90 days of the date of such filing, whether—*

*(i) the petition contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in such petition;*

*(ii) all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist on the date on which the determination is made, except that—*

*(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii);*

*(II) the provisions of subparagraphs (B) and (C) of paragraph (1) shall apply to a determination under this clause in the same manner as they apply to a determination under paragraph (1)(A)(ii); and*

*(III) if the Attorney General determined under paragraph (1)(A)(ii) that any jobs satisfying the requirement of such paragraph were created, the number of those jobs shall be subtracted from the number of jobs otherwise needed to satisfy the requirement of this clause; and*

*(iii) considering all such enterprises together, on the date on which the determination is made, the eligible alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), except that—*

*(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(iii); and*

*(II) if the Attorney General determined under paragraph (1)(A)(iii) that any capital amount was invested that could be credited towards compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), such amount shall be subtracted from the amount of capital otherwise needed to satisfy the requirement of this clause.*

*(F) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (E), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.*

*(G) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—*

*(i) NOTICE.—If the Attorney General renders an adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.*

*(ii) TERMINATION IF ADVERSE DETERMINATION.—If the eligible alien's rebuttal does not cause the Attorney General to reverse each adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).*

*(d) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)(F)(iii) or (2)(G)(ii) of subsection (c) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General.*

*(e) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who obtained the status of an alien lawfully admitted for permanent residence on a conditional basis before the date of the enactment of this Act by virtue of being the child of an eligible alien described in subsection (b)(1), the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after obtaining such status.*

*(f) DEFINITION OF FULL-TIME.—For purposes of this section, the term ''full-time'' means a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.*

***SEC. 11032. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.***

*(a) IN GENERAL.—With respect to each eligible alien described in subsection (b), the Attorney General or the Secretary of State shall approve the application described in subsection (b)(2) and grant the alien (and any spouse or child of the alien, if the spouse or child is eligible to receive a visa under section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216A of such Act (8 U.S.C. 1186b). Such application shall be approved not later than 180 days after the date of the enactment of this Act.*

*(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in this subsection if the alien—*

*(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;*

*(2) pursuant to such approval, timely filed before the date of the enactment of this Act an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and*

*(3) is not inadmissible or deportable on any ground.*

*(c) TREATMENT OF CERTAIN APPLICATIONS.—*

*(1) REVOCATION OF APPROVAL OF PETITIONS.—If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).*

*(2) APPLICATIONS NO LONGER PENDING.—*

*(A) IN GENERAL.—If an application described in subsection (b)(2) is not pending on the date of the enactment of this Act, the Attorney General shall disregard the circumstances leading to such lack of pendency and treat it as reopened, if such lack of pendency is due to a determination that the alien—*

*(i) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)); or*

*(ii) departed the United States without advance parole.*

*(B) APPLICANTS ABROAD.—In the case of an eligible alien who filed an application for adjustment of status described in subsection (b)(2), but who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain adjustment of status under this section.*

*(d) RECORDATION OF DATE; REDUCTION OF NUMBERS.—Upon the approval of an application under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence on a conditional basis as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1151(d) and 1153(b)(5)) for the fiscal year then current.*

*(e) REMOVAL OF CONDITIONAL BASIS.—*

*(1) PETITION.—In order for a conditional basis established under this section for an alien (and the alien's spouse and children) to be removed, the alien must satisfy the requirements of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)), including the submission of a petition in accordance with subparagraph (A) of such section. Such petition may include the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) in the United States in which the alien has made a capital investment at any time.*

*(2) DETERMINATION.—In carrying out section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)) with respect to an alien described in paragraph (1), the Attorney General, in lieu of the determination described in such section 216A(c)(3), shall make a determination, within 90 days of the date of such filing, whether—*

*(A) the petition described in paragraph (1) contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in the petition;*

*(B) subject to subparagraphs (B) and (C) of section 11031(c)(1), all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on either of the dates described in paragraph (3); and*

*(C) considering the alien's investments in such enterprises on either of the dates described in paragraph (3), or on both such dates, the alien is or was in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).*

*(3) DATES.—The dates described in this paragraph are the following:*

*(A) The date on which the application described in subsection (b)(2) was filed.*

*(B) The date on which the determination under paragraph (2) is made.*

*(f) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who was a child on the date on which the application described in subsection (b)(2) was filed, the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after such date.*

***SEC. 11033. REGULATIONS.***

*The Immigration and Naturalization Service shall promulgate regulations to implement this chapter not later than 120 days after the date of enactment of this Act. Until such regulations are promulgated, the Attorney General shall not deny a petition filed or pending under section 216A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible alien described in section 11031, or on an application filed or pending under section 245 of such Act (8 U.S.C. 1255) that relates to an eligible alien described in section 11032. Until such regulations are promulgated, the Attorney General shall not initiate or proceed with removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) that relate to an eligible alien described in section 11031 or 11032.*

***SEC. 11034. DEFINITIONS.***

*Except as otherwise provided, the terms used in this chapter shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)).*

***CHAPTER 2—AMENDMENTS TO OTHER LAWS***

***SEC. 11035. DEFINITION OF "FULL-TIME EMPLOYMENT".***

*Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended by adding at the end the following:*

*''(D) FULL-TIME EMPLOYMENT DEFINED.—In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.''.*

***SEC. 11036. ELIMINATING ENTERPRISE ESTABLISHMENT REQUIREMENT FOR ALIEN ENTREPRENEURS.***

*(a) PREFERENCE ALLOCATION FOR EMPLOYMENT CREATION.—Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended—*

*(1) in subparagraph (A)—*

*(A) in the matter preceding clause (i), by striking ''enterprise—'' and inserting ''enterprise (including a limited partnership)—'';*

*(B) by striking clause (i); and*

*(C) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and*

*(2) in subparagraph (B)(i), by striking ''establish'' and inserting ''invest in''.*

*(b) CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—*

*(1) in subsection (b)(1)—*

*(A) in subparagraph (A) by striking ''establishment of'' and inserting ''investment in''; and*

*(B) by amending subparagraph (B) to read as follows:*

*''(B)(i) the alien did not invest, or was not actively in the process of investing, the requisite capital; or*

*''(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien's residence in the United States; or'';*

*(2) by amending subsection (d)(1) to read as follows:*

*''(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that the alien—*

*''(A)(i) invested, or is actively in the process of investing, the requisite capital; and*

*''(ii) sustained the actions described in clause (i) throughout the period of the alien's residence in the United States; and*

*''(B) is otherwise conforming to the requirements of section 203(b)(5).''; and*

*(3) by adding at the end of subsection (f) the following:*

*''(3) The term 'commercial enterprise' includes a limited partnership.''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to aliens having any of the following petitions pending on or after the date of the enactment of this Act:*

*(1) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).*

*(2) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.*

***SEC. 11037. AMENDMENTS TO PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.***

*(a) PURPOSE OF PROGRAM.—Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), is amended—*

*(1) by inserting after ''regional center in the United States'' the following: '', designated by*

*the Attorney General on the basis of a general proposal,'';*

*(2) by striking ''and increased domestic'' and inserting ''or increased domestic''; and*

*(3) by adding at the end the following:*

*''A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.''.*

*(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—*

*(1) any proposal for a regional center pending before the Attorney General (whether for an initial decision or on appeal) on or after the date of the enactment of this Act; and*

*(2) any of the following petitions, if filed on or after the date of the enactment of this Act:*

*(A) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision)(or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).*

*(B) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.*

### *Subtitle C—Judicial Improvements Act of 2002*

**SEC. 11041. SHORT TITLE.**

*This subtitle may be cited as the ''Judicial Improvements Act of 2002''.*

**SEC. 11042. JUDICIAL DISCIPLINE PROCEDURES.**

*(a) IN GENERAL.—Part I of title 28, United States Code, is amended by inserting after chapter 15 the following new chapter:*

### *''CHAPTER 16—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE*

*''Sec.*
*''351. Complaints; judge defined.*
*''352. Review of complaint by chief judge.*
*''353. Special committees.*
*''354. Action by judicial council.*
*''355. Action by Judicial Conference.*
*''356. Subpoena power.*
*''357. Review of orders and actions.*
*''358. Rules.*
*''359. Restrictions.*
*''360. Disclosure of information.*
*''361. Reimbursement of expenses.*
*''362. Other provisions and rules not affected.*
*''363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit.*
*''364. Effect of felony conviction.*

### *''§ 351. Complaints; judge defined*

*''(a) FILING OF COMPLAINT BY ANY PERSON.—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.*

*''(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.*

*''(c) TRANSMITTAL OF COMPLAINT.—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term 'chief judge'). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.*

*''(d) DEFINITIONS.—In this chapter—*

*''(1) the term 'judge' means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and*

*''(2) the term 'complainant' means the person filing a complaint under subsection (a) of this section.*

### *''§ 352. Review of complaint by chief judge*

*''(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—*

*''(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and*

*''(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.*

*For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.*

*''(b) ACTION BY CHIEF JUDGE FOLLOWING REVIEW.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—*

*''(1) dismiss the complaint—*

*''(A) if the chief judge finds the complaint to be—*

*''(i) not in conformity with section 351(a);*

*''(ii) directly related to the merits of a decision or procedural ruling; or*

*''(iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or*

*''(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or*

*''(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events. The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.*

*''(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.*

*''(d) REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL.—Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.*

### *''§ 353. Special committees*

*''(a) APPOINTMENT.—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—*

*''(1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;*

*''(2) certify the complaint and any other documents pertaining thereto to each member of such committee; and*

*''(3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.*

*''(b) CHANGE IN STATUS OR DEATH OF JUDGES.—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.*

*''(c) INVESTIGATION BY SPECIAL COMMITTEE.—Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.*

### *''§ 354. Action by judicial council*

*''(a) ACTIONS UPON RECEIPT OF REPORT.—*

*''(1) ACTIONS.—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—*

*''(A) may conduct any additional investigation which it considers to be necessary;*

*''(B) may dismiss the complaint; and*

*''(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.*

*''(2) DESCRIPTION OF POSSIBLE ACTIONS IF COMPLAINT NOT DISMISSED.—*

*''(A) IN GENERAL.—Action by the judicial council under paragraph (1)(C) may include—*

*''(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;*

*''(ii) censuring or reprimanding such judge by means of private communication; and*

*''(iii) censuring or reprimanding such judge by means of public announcement.*

*''(B) FOR ARTICLE III JUDGES.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—*

*''(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and*

*''(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.*

*''(C) FOR MAGISTRATE JUDGES.—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.*

*''(3) LIMITATIONS ON JUDICIAL COUNCIL REGARDING REMOVALS.—*

''(A) ARTICLE III JUDGES.—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

''(B) MAGISTRATE AND BANKRUPTCY JUDGES.—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

''(4) NOTICE OF ACTION TO JUDGE.—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

''(b) REFERRAL TO JUDICIAL CONFERENCE.—

''(1) IN GENERAL.—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

''(2) SPECIAL CIRCUMSTANCES.—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

''(A) which might constitute one or more grounds for impeachment under article II of the Constitution, or

''(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

''(3) NOTICE TO COMPLAINANT AND JUDGE.—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

**''§ 355. Action by Judicial Conference**

''(a) IN GENERAL.—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

''(b) IF IMPEACHMENT WARRANTED.—

''(1) IN GENERAL.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

''(2) IN CASE OF FELONY CONVICTION.—If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

**''§ 356. Subpoena power**

''(a) JUDICIAL COUNCILS AND SPECIAL COMMITTEES.—In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

''(b) JUDICIAL CONFERENCE AND STANDING COMMITTEES.—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

**''§ 357. Review of orders and actions**

''(a) REVIEW OF ACTION OF JUDICIAL COUNCIL.—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

''(b) ACTION OF JUDICIAL CONFERENCE.—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

''(c) NO JUDICIAL REVIEW.—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

**''§ 358. Rules**

''(a) IN GENERAL.—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

''(b) REQUIRED PROVISIONS.—Rules prescribed under subsection (a) shall contain provisions requiring that—

''(1) adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

''(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

''(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

''(c) PROCEDURES.—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

**''§ 359. Restrictions**

''(a) RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION.—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

''(b) AMICUS CURIAE.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

**''§ 360. Disclosure of information**

''(a) CONFIDENTIALITY OF PROCEEDINGS.—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

''(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

''(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

''(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

''(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

**''§ 361. Reimbursement of expenses**

''Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.

**''§ 362. Other provisions and rules not affected**

''Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

**''§ 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit**

''The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

**''§ 364. Effect of felony conviction**

''In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the following shall apply:

''(1) The judge shall not hear or decide cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.

''(2) Any service as such judge or judge of a court referred to in section 363, after the conviction is final and all time for filing appeals thereof has expired, shall not be included for purposes of determining years of service under section 371(c), 377, or 178 of this title or creditable service under subchapter III of chapter 83, or chapter 84, of title 5.''.

(b) CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States

*Code, is amended by inserting after the item relating to chapter 15 the following new item:*

***"16. Complaints against judges and judicial discipline ..... 351".***

***SEC. 11043. TECHNICAL AMENDMENTS.***

*(a) RETIREMENT FOR DISABILITY.—(1) Section 372 of title 28, United States Code, is amended—*

*(A) in the section caption by striking "**; judicial discipline**"; and*

*(B) by striking subsection (c).*

*(2) The item relating to section 372 in the table of sections for chapter 17 of title 28, United States Code, is amended by striking "; judicial discipline".*

*(b) JUDICIAL CONFERENCE.—Section 331 of title 28, United States Code, is amended in the fourth undesignated paragraph by striking "section 372(c)" each place it appears and inserting "chapter 16".*

*(c) JUDICIAL COUNCILS.—Section 332 of title 28, United States Code, is amended—*

*(1) in subsection (d)(2)—*

*(A) by striking "section 372(c) of this title" and inserting "chapter 16 of this title"; and*

*(B) by striking "372(c)(4)" and inserting "353"; and*

*(2) by striking the second subsection designated as subsection (h).*

*(d) RECALL OF BANKRUPTCY JUDGES AND MAGISTRATE JUDGES.—Section 375(d) of title 28, United States Code, is amended by striking "section 372(c)" and inserting "chapter 16".*

*(e) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 604 of title 28, United States Code, is amended—*

*(1) in subsection (a)(20)—*

*(A) in subparagraph (B), by striking "372(c)(11)" and inserting "358"; and*

*(B) in subparagraph (C), by striking "372(c)(15)" and inserting "360(b)"; and*

*(2) in subsection (h)—*

*(A) in paragraph (1), by striking "section 372" each place it appears and inserting "chapter 16"; and*

*(B) in paragraph (2), by striking "section 372(c)" and inserting "chapter 16".*

*(f) COURT OF APPEALS FOR VETERANS CLAIMS.—Section 7253(g) of title 38, United States Code, is amended—*

*(1) in paragraph (1)—*

*(A) by striking "section 372(c)" and inserting "chapter 16"; and*

*(B) by striking "such section" and inserting "such chapter";*

*(2) in paragraph (2)—*

*(A) in the first sentence, by striking "paragraphs (7) through (15) of section 372(c)" and inserting "sections 354(b) through 360"; and*

*(B) in the second sentence, by striking "paragraph (7) or (8) of section 372(c)" and inserting "section 354(b) or 355"; and*

*(3) in paragraph (3)(B), by striking "372(c)(16)" and inserting "361".*

***SEC. 11044. SEVERABILITY.***

*If any provision of this subtitle, an amendment made by this subtitle, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this subtitle, the amendments made by this subtitle, and the application of the provisions of such to any person or circumstance shall not be affected thereby.*

***Subtitle D—Antitrust Modernization Commission Act of 2002***

***SEC. 11051. SHORT TITLE.***

*This subtitle may be cited as the "Antitrust Modernization Commission Act of 2002".*

***SEC. 11052. ESTABLISHMENT.***

*There is established the Antitrust Modernization Commission (in this subtitle referred to as the "Commission").*

***SEC. 11053. DUTIES OF THE COMMISSION.***

*The duties of the Commission are—*

*(1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;*

*(2) to solicit views of all parties concerned with the operation of the antitrust laws;*

*(3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and*

*(4) to prepare and to submit to Congress and the President a report in accordance with section 11058.*

***SEC. 11054. MEMBERSHIP.***

*(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed as follows:*

*(1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.*

*(2) Two members shall be appointed by the majority leader of the Senate.*

*(3) Two members shall be appointed by the minority leader of the Senate.*

*(4) Two members shall be appointed by the Speaker of the House of Representatives.*

*(5) Two members shall be appointed by the minority leader of the House of Representatives.*

*(b) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall be ineligible for appointment to the Commission.*

*(c) TERM OF APPOINTMENT.—*

*(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.*

*(2) EARLY TERMINATION OF APPOINTMENT.—If a member of the Commission who is appointed to the Commission as—*

*(A) an officer or employee of a government ceases to be an officer or employee of such government; or*

*(B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;*

*then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.*

*(d) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.*

*(e) APPOINTMENT DEADLINE.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act.*

*(f) MEETINGS.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.*

*(g) VACANCY.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.*

*(h) CONSULTATION BEFORE APPOINTMENT.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall consult with each other to ensure fair and equitable representation of various points of view in the Commission.*

*(i) CHAIRPERSON; VICE CHAIRPERSON.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.*

***SEC. 11055. COMPENSATION OF THE COMMISSION.***

*(a) PAY.—*

*(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.*

*(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.*

*(b) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.*

***SEC. 11056. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.***

*(a) STAFF.—*

*(1) APPOINTMENT.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to perform its duties. The appointment of an executive director shall be subject to approval by the Commission.*

*(2) COMPENSATION.—The chairperson of the Commission may fix the compensation of the executive director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.*

*(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109(b) of title 5, United States Code.*

***SEC. 11057. POWERS OF THE COMMISSION.***

*(a) HEARINGS AND MEETINGS.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.*

*(b) OFFICIAL DATA.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.*

*(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.*

*(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.*

*(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.*

*(f) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.*

***SEC. 11058. REPORT.***

*Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.*

***SEC. 11059. TERMINATION OF COMMISSION.***

*The Commission shall cease to exist 30 days after the date on which the report required by section 8 is submitted.*

***SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.***

*There is authorized to be appropriated $4,000,000 to carry out this subtitle.*

## *TITLE II—JUVENILE JUSTICE*

### *Subtitle A—Juvenile Offender Accountability*

***SEC. 12101. SHORT TITLE.***

*This subtitle may be cited as the ''Consequences for Juvenile Offenders Act of 2002''.*

***SEC. 12102. JUVENILE OFFENDER ACCOUNTABILITY.***

*(a) GRANT PROGRAM.—Part R of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ee et seq.) is amended to read as follows:*

*''PART R—JUVENILE ACCOUNTABILITY BLOCK GRANTS*

***''SEC. 1801. PROGRAM AUTHORIZED.***

*''(a) IN GENERAL.—The Attorney General is authorized to provide grants to States, for use by States and units of local government, and in certain cases directly to specially qualified units.*

*''(b) AUTHORIZED ACTIVITIES.—Amounts paid to a State or a unit of local government under this part shall be used by the State or unit of local government for the purpose of strengthening the juvenile justice system, which includes—*

*''(1) developing, implementing, and administering graduated sanctions for juvenile offenders;*

*''(2) building, expanding, renovating, or operating temporary or permanent juvenile correction, detention, or community corrections facilities;*

*''(3) hiring juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders, to promote the effective and expeditious administration of the juvenile justice system;*

*''(4) hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and case backlogs reduced;*

*''(5) providing funding to enable prosecutors to address drug, gang, and youth violence problems more effectively and for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;*

*''(6) establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime;*

*''(7) establishing juvenile gun courts for the prosecution and adjudication of juvenile firearms offenders;*

*''(8) establishing drug court programs for juvenile offenders that provide continuing judicial supervision over juvenile offenders with substance abuse problems and the integrated administration of other sanctions and services for such offenders;*

*''(9) establishing and maintaining a system of juvenile records designed to promote public safety;*

*''(10) establishing and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;*

*''(11) establishing and maintaining accountability-based programs designed to reduce recidivism among juveniles who are referred by law enforcement personnel or agencies;*

*''(12) establishing and maintaining programs to conduct risk and need assessments of juvenile offenders that facilitate the effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment to such offenders;*

*''(13) establishing and maintaining accountability-based programs that are designed to enhance school safety;*

*''(14) establishing and maintaining restorative justice programs;*

*''(15) establishing and maintaining programs to enable juvenile courts and juvenile probation officers to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism; or*

*''(16) hiring detention and corrections personnel, and establishing and maintaining training programs for such personnel to improve facility practices and programming.*

*''(c) DEFINITION.—In this section the term 'restorative justice program' means a program that emphasizes the moral accountability of an offender toward the victim and the affected community and may include community reparations boards, restitution (in the form of monetary payment or service to the victim or, where no victim can be identified, service to the affected community), and mediation between victim and offender.*

***''SEC. 1801A. TRIBAL GRANT PROGRAM AUTHORIZED.***

*''(a) IN GENERAL.—From the amount reserved under section 1810(b), the Attorney General shall make grants to Indian tribes for programs to strengthen tribal juvenile justice systems and to hold tribal youth accountable.*

*''(b) ELIGIBILITY.—Indian tribes, as defined by section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), or a consortia of such tribes, shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. Only tribes that carry out tribal juvenile justice functions shall be eligible to receive a grant under this section.*

*''(c) AWARDS.—The Attorney General shall award grants under this section on a competitive basis.*

*''(d) GUIDELINES.—The Attorney General shall issue guidelines establishing application, use, and award criteria and processes consistent with the purposes and requirements of this Act.*

***''SEC. 1802. GRANT ELIGIBILITY.***

*''(a) STATE ELIGIBILITY.—To be eligible to receive a grant under this part, a State shall submit to the Attorney General an application at such time, in such form, and containing such assurances and information as the Attorney General may require by guidelines, including—*

*''(1) information about—*

*''(A) the activities proposed to be carried out with such grant; and*

*''(B) the criteria by which the State proposes to assess the effectiveness of such activities on achieving the purposes of this part; and*

*''(2) assurances that the State and any unit of local government to which the State provides funding under section 1803(b), has in effect (or shall have in effect, not later than 1 year after the date that the State submits such application) laws, or has implemented (or shall implement, not later than 1 year after the date that the State submits such application) policies and programs, that provide for a system of graduated sanctions described in subsection (c).*

*''(b) LOCAL ELIGIBILITY.—*

*''(1) SUBGRANT ELIGIBILITY.—To be eligible to receive a subgrant, a unit of local government, other than a specially qualified unit, shall provide to the State—*

*''(A) information about—*

*''(i) the activities proposed to be carried out with such subgrant; and*

*''(ii) the criteria by which the unit proposes to assess the effectiveness of such activities on achieving the purposes of this part; and*

*''(B) such assurances as the State shall require, that, to the maximum extent applicable, the unit of local government has in effect (or shall have in effect, not later than 1 year after the date that the unit submits such application) laws, or has implemented (or shall implement, not later than 1 year after the date that the unit submits such application) policies and programs, that provide for a system of graduated sanctions described in subsection (c).*

*''(2) SPECIAL RULE.—The requirements of paragraph (1) shall apply to a specially qualified unit that receives funds from the Attorney General under section 1803(e), except that information that is otherwise required to be submitted to the State shall be submitted to the Attorney General.*

*''(c) ROLE OF COURTS.—In the development of the grant application, the States and units of local governments shall take into consideration the needs of the judicial branch in strengthening the juvenile justice system and specifically seek the advice of the chief of the highest court of the State and where appropriate, the chief judge of the local court, with respect to the application.*

*''(d) GRADUATED SANCTIONS.—A system of graduated sanctions, which may be discretionary as provided in subsection (e), shall ensure, at a minimum, that—*

*''(1) sanctions are imposed on a juvenile offender for each delinquent offense;*

*''(2) sanctions escalate in intensity with each subsequent, more serious delinquent offense;*

*''(3) there is sufficient flexibility to allow for individualized sanctions and services suited to the individual juvenile offender; and*

*''(4) appropriate consideration is given to public safety and victims of crime.*

*''(e) DISCRETIONARY USE OF SANCTIONS.—*

*''(1) VOLUNTARY PARTICIPATION.—A State or unit of local government may be eligible to receive a grant under this part if—*

*''(A) its system of graduated sanctions is discretionary; and*

*''(B) it demonstrates that it has promoted the use of a system of graduated sanctions by taking steps to encourage implementation of such a system by juvenile courts.*

*''(2) REPORTING REQUIREMENT IF GRADUATED SANCTIONS NOT USED.—*

*''(A) JUVENILE COURTS.—A State or unit of local government in which the imposition of graduated sanctions is discretionary shall require each juvenile court within its jurisdiction—*

*''(i) which has not implemented a system of graduated sanctions, to submit an annual report that explains why such court did not implement graduated sanctions; and*

*''(ii) which has implemented a system of graduated sanctions but has not imposed graduated sanctions in all cases, to submit an annual report that explains why such court did not impose graduated sanctions in all cases.*

*''(B) UNITS OF LOCAL GOVERNMENT.—Each unit of local government, other than a specially*

*qualified unit, that has 1 or more juvenile courts that use a discretionary system of graduated sanctions shall collect the information reported under subparagraph (A) for submission to the State each year.*

*''(C) STATES.—Each State and specially qualified unit that has 1 or more juvenile courts that use a discretionary system of graduated sanctions shall collect the information reported under subparagraph (A) for submission to the Attorney General each year. A State shall also collect and submit to the Attorney General the information collected under subparagraph (B).*

*''(f) DEFINITIONS.—In this section:*

*''(1) DISCRETIONARY.—The term 'discretionary' means that a system of graduated sanctions is not required to be imposed by each and every juvenile court in a State or unit of local government.*

*''(2) SANCTIONS.—The term 'sanctions' means tangible, proportional consequences that hold the juvenile offender accountable for the offense committed. A sanction may include counseling, restitution, community service, a fine, supervised probation, or confinement.*

***"SEC. 1803. ALLOCATION AND DISTRIBUTION OF FUNDS.***

*''(a) STATE ALLOCATION.—*

*''(1) IN GENERAL.—In accordance with regulations promulgated pursuant to this part and except as provided in paragraph (3), the Attorney General shall allocate—*

*''(A) 0.50 percent for each State; and*

*''(B) of the total funds remaining after the allocation under subparagraph (A), to each State, an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of people under the age of 18 living in such State for the most recent calendar year in which such data is available bears to the population of people under the age of 18 of all the States for such fiscal year.*

*''(2) PROHIBITION.—No funds allocated to a State under this subsection or received by a State for distribution under subsection (b) may be distributed by the Attorney General or by the State involved for any program other than a program contained in an approved application.*

*''(b) LOCAL DISTRIBUTION.—*

*''(1) IN GENERAL.—Except as provided in paragraph (2), each State which receives funds under subsection (a)(1) in a fiscal year shall distribute among units of local government, for the purposes specified in section 1801, not less than 75 percent of such amounts received.*

*''(2) WAIVER.—If a State submits to the Attorney General an application for waiver that demonstrates and certifies to the Attorney General that—*

*''(A) the State's juvenile justice expenditures in the fiscal year preceding the date in which an application is submitted under this part (the 'State percentage') is more than 25 percent of the aggregate amount of juvenile justice expenditures by the State and its eligible units of local government; and*

*''(B) the State has consulted with as many units of local government in such State, or organizations representing such units, as practicable regarding the State's calculation of expenditures under subparagraph (A), the State's application for waiver under this paragraph, and the State's proposed uses of funds.*

*''(3) ALLOCATION.—In making the distribution under paragraph (1), the State shall allocate to such units of local government an amount which bears the same ratio to the aggregate amount of such funds as—*

*''(A) the sum of—*

*''(i) the product of—*

*''(I) three-quarters; multiplied by*

*''(II) the average juvenile justice expenditure for such unit of local government for the 3 most recent calendar years for which such data is available; plus*

*''(ii) the product of—*

*''(I) one-quarter; multiplied by*

*''(II) the average annual number of part 1 violent crimes in such unit of local government for the 3 most recent calendar years for which such data is available, bears to—*

*''(B) the sum of the products determined under subparagraph (A) for all such units of local government in the State.*

*''(4) EXPENDITURES.—The allocation any unit of local government shall receive under paragraph (3) for a payment period shall not exceed 100 percent of juvenile justice expenditures of the unit for such payment period.*

*''(5) REALLOCATION.—The amount of any unit of local government's allocation that is not available to such unit by operation of paragraph (4) shall be available to other units of local government that are not affected by such operation in accordance with this subsection.*

*''(c) UNAVAILABILITY OF DATA FOR UNITS OF LOCAL GOVERNMENT.—If the State has reason to believe that the reported rate of part 1 violent crimes or juvenile justice expenditures for a unit of local government is insufficient or inaccurate, the State shall—*

*''(1) investigate the methodology used by the unit to determine the accuracy of the submitted data; and*

*''(2) if necessary, use the best available comparable data regarding the number of violent crimes or juvenile justice expenditures for the relevant years for the unit of local government.*

*''(d) LOCAL GOVERNMENT WITH ALLOCATIONS LESS THAN $10,000.—If under this section a unit of local government is allocated less than $10,000 for a payment period, the amount allotted shall be expended by the State on services to units of local government whose allotment is less than such amount in a manner consistent with this part.*

*''(e) DIRECT GRANTS TO SPECIALLY QUALIFIED UNITS.—*

*''(1) IN GENERAL.—If a State does not qualify or apply for funds reserved for allocation under subsection (a) by the application deadline established by the Attorney General, the Attorney General shall reserve not more than 75 percent of the allocation that the State would have received under subsection (a) for such fiscal year to provide grants to specially qualified units which meet the requirements for funding under section 1802.*

*''(2) AWARD BASIS.—In addition to the qualification requirements for direct grants for specially qualified units the Attorney General may use the average amount allocated by the States to units of local government as a basis for awarding grants under this section.*

***"SEC. 1804. GUIDELINES.***

*''(a) IN GENERAL.—The Attorney General shall issue guidelines establishing procedures under which a State or specifically qualified unit of local government that receives funds under section 1803 is required to provide notice to the Attorney General regarding the proposed use of funds made available under this part.*

*''(b) ADVISORY BOARD.—*

*''(1) IN GENERAL.—The guidelines referred to in subsection (a) shall include a requirement that such eligible State or unit of local government establish and convene an advisory board to recommend a coordinated enforcement plan for the use of such funds.*

*''(2) MEMBERSHIP.—The board shall include representation from, if appropriate—*

*''(A) the State or local police department;*

*''(B) the local sheriff's department;*

*''(C) the State or local prosecutor's office;*

*''(D) the State or local juvenile court;*

*''(E) the State or local probation office;*

*''(F) the State or local educational agency;*

*''(G) a State or local social service agency;*

*''(H) a nonprofit, nongovernmental victim advocacy organization; and*

*''(I) a nonprofit, religious, or community group.*

***"SEC. 1805. PAYMENT REQUIREMENTS.***

*''(a) TIMING OF PAYMENTS.—The Attorney General shall pay to each State or specifically qualified unit of local government that receives funds under section 1803 that has submitted an application under this part the amount awarded to such State or unit of local government not later than the later of—*

*''(1) the date that is 180 days after the date that the amount is available; or*

*''(2) the first day of the payment period if the State has provided the Attorney General with the assurances required by subsection (c).*

*''(b) REPAYMENT OF UNEXPENDED AMOUNTS.—*

*''(1) REPAYMENT REQUIRED.—From amounts awarded under this part, a State or specially qualified unit shall repay to the Attorney General, before the expiration of the 36-month period beginning on the date of the award, any amount that is not expended by such State or unit.*

*''(2) EXTENSION.—The Attorney General may adopt policies and procedures providing for a one-time extension, by not more than 12 months, of the period referred to in paragraph (1).*

*''(3) PENALTY FOR FAILURE TO REPAY.—If the amount required to be repaid is not repaid, the Attorney General shall reduce payment in future payment periods accordingly.*

*''(4) DEPOSIT OF AMOUNTS REPAID.—Amounts received by the Attorney General as repayments under this subsection shall be deposited in a designated fund for future payments to States and specially qualified units.*

*''(c) ADMINISTRATIVE COSTS.—A State or unit of local government that receives funds under this part may use not more than 5 percent of such funds to pay for administrative costs.*

*''(d) NONSUPPLANTING REQUIREMENT.—Funds made available under this part to States and units of local government shall not be used to supplant State or local funds as the case may be, but shall be used to increase the amount of funds that would, in the absence of funds made available under this part, be made available from State or local sources, as the case may be.*

*''(e) MATCHING FUNDS.—*

*''(1) IN GENERAL.—The Federal share of a grant received under this part may not exceed 90 percent of the total program costs.*

*''(2) CONSTRUCTION OF FACILITIES.—Notwithstanding paragraph (1), with respect to the cost of constructing juvenile detention or correctional facilities, the Federal share of a grant received under this part may not exceed 50 percent of approved cost.*

***"SEC. 1806. UTILIZATION OF PRIVATE SECTOR.***

*''Funds or a portion of funds allocated under this part may be used by a State or unit of local government that receives a grant under this part to contract with private, nonprofit entities, or community-based organizations to carry out the purposes specified under section 1801(b).*

***"SEC. 1807. ADMINISTRATIVE PROVISIONS.***

*''(a) IN GENERAL.—A State or specially qualified unit that receives funds under this part shall—*

*''(1) establish a trust fund in which the government will deposit all payments received under this part;*

*''(2) use amounts in the trust fund (including interest) during the period specified in section 1805(b)(1) and any extension of that period under section 1805(b)(2);*

*''(3) designate an official of the State or specially qualified unit to submit reports as the Attorney General reasonably requires, in addition to the annual reports required under this part; and*

*''(4) spend the funds only for the purpose of strengthening the juvenile justice system.*

*''(b) TITLE I PROVISIONS.—Except as otherwise provided, the administrative provisions of part H shall apply to this part and for purposes of this section any reference in such provisions to title I shall be deemed to include a reference to this part.*

***"SEC. 1808. ASSESSMENT REPORTS.***

*''(a) REPORTS TO ATTORNEY GENERAL.—*

*''(1) IN GENERAL.—Except as provided in paragraph (4), for each fiscal year for which a grant*

*or subgrant is awarded under this part, each State or specially qualified unit of local government that receives such a grant shall submit to the Attorney General a grant report, and each unit of local government that receives such a subgrant shall submit to the State a subgrant report, at such time and in such manner as the Attorney General may reasonably require.*

*''(2) GRANT REPORT.—Each grant report required by paragraph (1) shall include—*

*''(A) a summary of the activities carried out with such grant;*

*''(B) if such activities included any subgrant, a summary of the activities carried out with each such subgrant; and*

*''(C) an assessment of the effectiveness of such activities on achieving the purposes of this part.*

*''(3) SUBGRANT REPORT.—Each subgrant report required by paragraph (1) shall include—*

*''(A) a summary of the activities carried out with such subgrant; and*

*''(B) an assessment of the effectiveness of such activities on achieving the purposes of this part.*

*''(4) WAIVERS.—The Attorney General may waive the requirement of an assessment in paragraph (2)(C) for a State or specially qualified unit of local government, or in paragraph (3)(B) for a unit of local government, if the Attorney General determines that—*

*''(A) the nature of the activities are such that assessing their effectiveness would not be practical or insightful;*

*''(B) the amount of the grant or subgrant is such that carrying out the assessment would not be an effective use of those amounts; or*

*''(C) the resources available to the State or unit are such that carrying out the assessment would pose a financial hardship on the State or unit.*

*''(b) REPORTS TO CONGRESS.—Not later than 90 days after the last day of each fiscal year for which 1 or more grants are awarded under this part, the Attorney General shall submit to Congress a report, which shall include—*

*''(1) a summary of the information provided under subsection (a);*

*''(2) an assessment by the Attorney General of the grant program carried out under this part; and*

*''(3) such other information as the Attorney General considers appropriate.*

***''SEC. 1809. DEFINITIONS.***

*''In this part:*

*''(1) UNIT OF LOCAL GOVERNMENT.—The term 'unit of local government' means—*

*''(A) a county, township, city, or political subdivision of a county, township, or city, that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes;*

*''(B) any law enforcement district or judicial enforcement district that—*

*''(i) is established under applicable State law; and*

*''(ii) has the authority, in a manner independent of other State entities, to establish a budget and raise revenues; and*

*''(C) the District of Columbia and the recognized governing body of an Indian tribe or Alaskan Native village that carries out substantial governmental duties and powers.*

*''(2) SPECIALLY QUALIFIED UNIT.—The term 'specially qualified unit' means a unit of local government which may receive funds under this part only in accordance with section 1803(e).*

*''(3) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that—*

*''(A) the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands (the 'partial States') shall collectively be considered as 1 State; and*

*''(B) for purposes of section 1803(a), the amount allocated to a partial State shall bear the same proportion to the amount collectively allocated to the partial States as the population of the partial State bears to the collective population of the partial States.*

*''(4) JUVENILE.—The term 'juvenile' means an individual who is 17 years of age or younger.*

*''(5) JUVENILE JUSTICE EXPENDITURES.—The term 'juvenile justice expenditures' means expenditures in connection with the juvenile justice system, including expenditures in connection with such system to carry out—*

*''(A) activities specified in section 1801(b); and*

*''(B) other activities associated with prosecutorial and judicial services and corrections as reported to the Bureau of the Census for the fiscal year preceding the fiscal year for which a determination is made under this part.*

*''(6) PART 1 VIOLENT CRIMES.—The term 'part 1 violent crimes' means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.*

***''SEC. 1810. AUTHORIZATION OF APPROPRIATIONS.***

*''(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $350,000,000 for each of fiscal years 2002 through 2005.*

*''(b) OVERSIGHT ACCOUNTABILITY AND ADMINISTRATION.—*

*''(1) IN GENERAL.—Of the amount authorized to be appropriated under section 261 of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.), there shall be available to the Attorney General, for each of the fiscal years 2002 through 2004 (as applicable), to remain available until expended—*

*''(A) not more than 2 percent of that amount, for research, evaluation, and demonstration consistent with this part;*

*''(B) not more than 2 percent of that amount, for training and technical assistance; and*

*''(C) not more than 1 percent, for administrative costs to carry out the purposes of this part.*

*''(2) OVERSIGHT PLAN.—The Attorney General shall establish and execute an oversight plan for monitoring the activities of grant recipients.*

*''(c) TRIBAL SET-ASIDE.—Of the amounts appropriated under subsection (a), 2 percent shall be made available for programs that receive grants under section 1801A.''.*

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

*(c) TRANSITION OF JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANTS PROGRAM.—For each grant made from amounts made available for the Juvenile Accountability Incentive Block Grants program (as described under the heading ''VIOLENT CRIME REDUCTION PROGRAMS, STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE'' in the Department of Justice Appropriations Act, 2000 (as enacted by Public Law 106–113; 113 Stat. 1537–14)), the grant award shall remain available to the grant recipient for not more than 36 months after the date of receipt of the grant.*

***Subtitle B—Juvenile Justice and Delinquency Prevention Act of 2002***

***SEC. 12201. SHORT TITLE.***

*This subtitle may be cited as the ''Juvenile Justice and Delinquency Prevention Act of 2002''.*

***SEC. 12202. FINDINGS.***

*Section 101 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601) is amended to read as follows:*

*''FINDINGS*

*''SEC. 101. (a) The Congress finds the following:*

*''(1) Although the juvenile violent crime arrest rate in 1999 was the lowest in the decade, there remains a consensus that the number of crimes and the rate of offending by juveniles nationwide is still too high.*

*''(2) According to the Office of Juvenile Justice and Delinquency Prevention, allowing 1 youth to leave school for a life of crime and of drug abuse costs society $1,700,000 to $2,300,000 annually.*

*''(3) One in every 6 individuals (16.2 percent) arrested for committing violent crime in 1999 was less than 18 years of age. In 1999, juveniles accounted for 9 percent of murder arrests, 17 percent of forcible rape arrests, 25 percent of robbery arrest, 14 percent of aggravated assault arrests, and 24 percent of weapons arrests.*

*''(4) More than ½ of juvenile murder victims are killed with firearms. Of the nearly 1,800 murder victims less than 18 years of age, 17 percent of the victims less than 13 years of age were murdered with a firearm, and 81 percent of the victims 13 years of age or older were killed with a firearm.*

*''(5) Juveniles accounted for 13 percent of all drug abuse violation arrests in 1999. Between 1990 and 1999, juvenile arrests for drug abuse violations rose 132 percent.*

*''(6) Over the last 3 decades, youth gang problems have increased nationwide. In the 1970's, 19 States reported youth gang problems. By the late 1990's, all 50 States and the District of Columbia reported gang problems. For the same period, the number of cities reporting youth gang problems grew 843 percent, and the number of counties reporting gang problems increased more than 1,000 percent.*

*''(7) According to a national crime survey of individuals 12 years of age or older during 1999, those 12 to 19 years old are victims of violent crime at higher rates than individuals in all other age groups. Only 30.8 percent of these violent victimizations were reported by youth to police in 1999.*

*''(8) One-fifth of juveniles 16 years of age who had been arrested were first arrested before attaining 12 years of age. Juveniles who are known to the juvenile justice system before attaining 13 years of age are responsible for a disproportionate share of serious crimes and violence.*

*''(9) The increase in the arrest rates for girls and young juvenile offenders has changed the composition of violent offenders entering the juvenile justice system.*

*''(10) These problems should be addressed through a 2-track common sense approach that addresses the needs of individual juveniles and society at large by promoting—*

*''(A) quality prevention programs that—*

*''(i) work with juveniles, their families, local public agencies, and community-based organizations, and take into consideration such factors as whether or not juveniles have been the victims of family violence (including child abuse and neglect); and*

*''(ii) are designed to reduce risks and develop competencies in at-risk juveniles that will prevent, and reduce the rate of, violent delinquent behavior; and*

*''(B) programs that assist in holding juveniles accountable for their actions and in developing the competencies necessary to become responsible and productive members of their communities, including a system of graduated sanctions to respond to each delinquent act, requiring juveniles to make restitution, or perform community service, for the damage caused by their delinquent acts, and methods for increasing victim satisfaction with respect to the penalties imposed on juveniles for their acts.*

*''(11) Coordinated juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter can help prevent juveniles from becoming delinquent and help delinquent youth return to a productive life.*

*''(b) Congress must act now to reform this program by focusing on juvenile delinquency prevention programs, as well as programs that hold juveniles accountable for their acts and which provide opportunities for competency development. Without true reform, the juvenile justice*

*system will not be able to overcome the challenges it will face in the coming years when the number of juveniles is expected to increase by 18 percent between 2000 and 2030.''.*

***SEC. 12203. PURPOSE.***

*Section 102 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5602) is amended to read as follows:*

*''PURPOSES*

*''SEC. 102. The purposes of this title and title II are—*

*''(1) to support State and local programs that prevent juvenile involvement in delinquent behavior;*

*''(2) to assist State and local governments in promoting public safety by encouraging accountability for acts of juvenile delinquency; and*

*''(3) to assist State and local governments in addressing juvenile crime through the provision of technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency.''.*

***SEC. 12204. DEFINITIONS.***

*Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—*

*(1) in paragraph (3) by striking ''to help prevent juvenile delinquency'' and inserting ''designed to reduce known risk factors for juvenile delinquent behavior, provides activities that build on protective factors for, and develop competencies in, juveniles to prevent, and reduce the rate of, delinquent juvenile behavior'',*

*(2) in paragraph (4) by inserting ''title I of'' before ''the Omnibus'' each place it appears,*

*(3) in paragraph (7) by striking ''the Trust Territory of the Pacific Islands,'',*

*(4) in paragraph (12)(B) by striking '', of any nonoffender,'',*

*(5) in paragraph (13)(B) by striking '', any nonoffender,'',*

*(6) in paragraph (14) by inserting ''drug trafficking,'' after ''assault,'',*

*(7) in paragraph (16)—*

*(A) in subparagraph (A) by adding ''and'' at the end, and*

*(B) by striking subparagraph (C),*

*(8) in paragraph (22)—*

*(A) by redesignating subparagraphs (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and*

*(B) by striking ''and'' at the end,*

*(9) in paragraph (23) by striking the period at the end and inserting a semicolon, and*

*(10) by adding at the end the following:*

*''(24) the term 'graduated sanctions' means an accountability-based, graduated series of sanctions (including incentives, treatment, and services) applicable to juveniles within the juvenile justice system to hold such juveniles accountable for their actions and to protect communities from the effects of juvenile delinquency by providing appropriate sanctions for every act for which a juvenile is adjudicated delinquent, by inducing their law-abiding behavior, and by preventing their subsequent involvement with the juvenile justice system;*

*''(25) the term 'contact' means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under section 31.303(d)(1)(i) of title 28, Code of Federal Regulations, as in effect on December 10, 1996;*

*''(26) the term 'adult inmate' means an individual who—*

*''(A) has reached the age of full criminal responsibility under applicable State law; and*

*''(B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense;*

*''(27) the term 'violent crime' means—*

*''(A) murder or nonnegligent manslaughter, forcible rape, or robbery, or*

*''(B) aggravated assault committed with the use of a firearm;*

*''(28) the term 'collocated facilities' means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; and*

*''(29) the term 'related complex of buildings' means 2 or more buildings that share—*

*''(A) physical features, such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or*

*''(B) the specialized services that are allowable under section 31.303(e)(3)(i)(C)(3) of title 28 of the Code of Federal Regulations, as in effect on December 10, 1996.''.*

***SEC. 12205. CONCENTRATION OF FEDERAL EFFORT.***

*Section 204 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended—*

*(1) in subsection (b)—*

*(A) in paragraph (3) by striking ''and of the prospective'' and all that follows through ''administered'',*

*(B) in paragraph (5) by striking ''parts C and D'' each place it appears and inserting ''parts D and E'', and*

*(C) by amending paragraph (7) to read as follows:*

*''(7) not later than 1 year after the date of the enactment of this paragraph, issue model standards for providing mental health care to incarcerated juveniles.'',*

*(2) in subsection (c) by striking ''and reports'' and all that follows through ''this part'', and inserting ''as may be appropriate to prevent the duplication of efforts, and to coordinate activities, related to the prevention of juvenile delinquency'',*

*(3) by amending subsection (d) to read as follows:*

*''(d) The Administrator shall have the sole authority to delegate any of the functions of the Administrator under this Act.'';*

*(4) by striking subsection (i), and*

*(5) by redesignating subsection (h) as subsection (f).*

***SEC. 12206. COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION.***

*Section 206(c)(2)(B) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616(c)(2)(B)) is amended by striking ''Education and Labor'' and inserting ''Education and the Workforce''.*

***SEC. 12207. ANNUAL REPORT.***

*Section 207 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5617) is amended by striking paragraphs (4) and (5), and inserting the following:*

*''(4) An evaluation of the programs funded under this title and their effectiveness in reducing the incidence of juvenile delinquency, particularly violent crime, committed by juveniles.''.*

***SEC. 12208. ALLOCATION.***

*Section 222 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632) is amended—*

*(1) in subsection (a)—*

*(A) in paragraph (2)—*

*(i) in subparagraph (A)—*

*(I) by striking ''(other than parts D and E)'',*

*(II) by striking ''amount, up to $400,000,'' and inserting ''amount up to $400,000'',*

*(III) by striking ''1992'' the 1st place it appears and inserting ''2000,'',*

*(IV) by striking ''1992'' the last place it appears and inserting ''2000'',*

*(V) by striking ''the Trust Territory of the Pacific Islands,'', and*

*(VI) by striking ''amount, up to $100,000,'' and inserting ''amount up to $100,000'',*

*(ii) in subparagraph (B)—*

*(I) by striking ''(other than part D)'',*

*(II) by striking ''$400,000'' and inserting ''$600,000'',*

*(III) by striking ''or such greater amount, up to $600,000'' and all that follows through ''section 299(a) (1) and (3)'',*

*(IV) by striking ''the Trust Territory of the Pacific Islands,'',*

*(V) by striking ''amount, up to $100,000,'' and inserting ''amount up to $100,000'', and*

*(VI) by striking ''1992'' and inserting ''2000,'',*

*(B) in paragraph (3)—*

*(i) by striking ''allot'' and inserting ''allocate'', and*

*(ii) by striking ''1992'' each place it appears and inserting ''2000'', and*

*(2) in subsection (b) by striking ''the Trust Territory of the Pacific Islands,''.*

***SEC. 12209. STATE PLANS.***

*Section 223 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended—*

*(1) in subsection (a)—*

*(A) in the 2d sentence by striking ''and challenge'' and all that follows through ''part E'', and inserting '', projects, and activities'',*

*(B) in paragraph (3)—*

*(i) by striking '', which—'' and inserting ''that—'',*

*(ii) in subparagraph (A)(i) by striking ''or the administration of juvenile justice'' and inserting '', the administration of juvenile justice, or the reduction of juvenile delinquency'', and*

*(iii) in subparagraph (D)—*

*(I) in clause (i) by inserting ''and'' at the end, and*

*(II) in clause (ii) by striking ''paragraphs'' and all that follows through ''part E'', and inserting ''paragraphs (11), (12), and (13)'',*

*(C) in paragraph (5)—*

*(i) in the matter preceding subparagraph (A) by striking '', other than'' and inserting ''reduced by the percentage (if any) specified by the State under the authority of paragraph (25) and excluding'', and*

*(ii) in subparagraph (C) by striking ''paragraphs (12)(A), (13), and (14)'' and inserting ''paragraphs (11), (12), and (13)'',*

*(D) by striking paragraph (6),*

*(E) in paragraph (7) by inserting '', including in rural areas'' before the semicolon at the end,*

*(F) in paragraph (8)—*

*(i) in subparagraph (A)—*

*(I) by striking ''for (i)'' and all that follows through ''relevant jurisdiction'', and inserting ''for an analysis of juvenile delinquency problems in, and the juvenile delinquency control and delinquency prevention needs (including educational needs) of, the State'', and*

*(II) by striking ''of the jurisdiction; (ii)'' and all that follows through the semicolon at the end, and inserting ''of the State; and'',*

*(ii) by amending subparagraph (B) to read as follows:*

*''(B) contain—*

*''(i) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;*

*''(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and*

*''(iii) a plan for providing needed mental health services to juveniles in the juvenile justice system, including information on how such plan is being implemented and how such services will be targeted to those juveniles in such system who are in greatest need of such services;'', and*

*(iii) by striking subparagraphs (C) and (D),*

*(G) by amending paragraph (9) to read as follows:*

*''(9) provide for the coordination and maximum utilization of existing juvenile delinquency programs, programs operated by public and private agencies and organizations, and other related programs (such as education, special education, recreation, health, and welfare programs) in the State;'',*

*(H) in paragraph (10)—*

*(i) in subparagraph (A)—*

*(I) by striking '', specifically'' and inserting ''including'',*

*(II) by striking clause (i), and*

*(III) redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively,*

*(ii) by amending subparagraph (D) to read as follows:*

*''(D) programs that provide treatment to juvenile offenders who are victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such juvenile offenders will commit subsequent violations of law;'',*

*(iii) in subparagraph (E)—*

*(I) by redesignating clause (ii) as clause (iii), and*

*(II) by striking ''juveniles, provided'' and all that follows through ''provides; and'', and inserting the following:*

*''juveniles—*

*''(i) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations;*

*''(ii) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and'',*

*(iv) by amending subparagraph (F) to read as follows:*

*''(F) expanding the use of probation officers—*

*''(i) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and*

*''(ii) to ensure that juveniles follow the terms of their probation;'',*

*(v) by amending subparagraph (G) to read as follows:*

*''(G) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officials, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;'',*

*(vii) in subparagraph (H) by striking ''handicapped youth'' and inserting ''juveniles with disabilities'',*

*(viii) by striking subparagraph (K),*

*(ix) in subparagraph (L)—*

*(I) in clause (iv) by adding ''and'' at the end,*

*(II) in clause (v) by striking ''and'' at the end, and*

*(III) by striking clause (vi),*

*(x) in subparagraph (M) by striking ''boot camps'',*

*(xi) by amending subparagraph (N) to read as follows:*

*''(N) community-based programs and services to work with juveniles, their parents, and other family members during and after incarceration in order to strengthen families so that such juveniles may be retained in their homes;'',*

*(xii) in subparagraph (O)—*

*(I) in striking ''cultural'' and inserting ''other'', and*

*(II) by striking the period at the end and inserting a semicolon,*

*(xiii) by redesignating subparagraphs (L), (M), (N), and (O) as subparagraphs (K), (L), (M), and (N), respectively; and*

*(xiv) by adding at the end the following:*

*''(O) programs designed to prevent and to reduce hate crimes committed by juveniles;*

*''(P) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;*

*''(Q) community-based programs that provide follow-up post-placement services to adjudicated juveniles, to promote successful reintegration into the community;*

*''(R) projects designed to develop and implement programs to protect the rights of juveniles affected by the juvenile justice system; and*

*''(S) programs designed to provide mental health services for incarcerated juveniles suspected to be in need of such services, including assessment, development of individualized treatment plans, and discharge plans.'',*

*(I) by amending paragraph (12) to read as follows:*

*''(12) shall, in accordance with rules issued by the Administrator, provide that—*

*''(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding—*

*''(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;*

*''(ii) juveniles who are charged with or who have committed a violation of a valid court order; and*

*''(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;*

*shall not be placed in secure detention facilities or secure correctional facilities; and*

*''(B) juveniles—*

*''(i) who are not charged with any offense; and*

*''(ii) who are—*

*''(I) aliens; or*

*''(II) alleged to be dependent, neglected, or abused;*

*shall not be placed in secure detention facilities or secure correctional facilities;'',*

*(J) by amending paragraph (13) to read as follows:*

*''(13) provide that—*

*''(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and*

*''(B) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles;'',*

*(K) by amending paragraph (14) to read as follows:*

*''(14) provide that no juvenile will be detained or confined in any jail or lockup for adults except—*

*''(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours—*

*''(i) for processing or release;*

*''(ii) while awaiting transfer to a juvenile facility; or*

*''(iii) in which period such juveniles make a court appearance;*

*and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles;*

*''(B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup—*

*''(i) in which—*

*''(I) such juveniles do not have contact with adult inmates; and*

*''(II) there is in effect in the State a policy that requires individuals who work with both such juveniles and adults inmates in collocated facilities have been trained and certified to work with juveniles; and*

*''(ii) that—*

*''(I) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget) and has no existing acceptable alternative placement available;*

*''(II) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or*

*''(III) is located where conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel;'';*

*(L) in paragraph (15)—*

*(i) by striking ''paragraph (12)(A), paragraph (13), and paragraph (14)'' and inserting ''paragraphs (11), (12), and (13)'', and*

*(ii) by striking ''paragraph (12)(A) and paragraph (13)'' and inserting ''paragraphs (11) and (12)'',*

*(M) in paragraph (16) by striking ''mentally, emotionally, or physically handicapping conditions'' and inserting ''disability'',*

*(N) by amending paragraph (19) to read as follows:*

*''(19) provide assurances that—*

*''(A) any assistance provided under this Act will not cause the displacement (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) of any currently employed employee;*

*''(B) activities assisted under this Act will not impair an existing collective bargaining relationship, contract for services, or collective bargaining agreement; and*

*''(C) no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization involved;'',*

*(O) by amending paragraph (22) to read as follows:*

*''(22) provide that the State agency designated under paragraph (1) will—*

*''(A) to the extent practicable give priority in funding to programs and activities that are based on rigorous, systematic, and objective research that is scientifically based;*

*''(B) from time to time, but not less than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, that it considers necessary; and*

*''(C) not expend funds to carry out a program if the recipient of funds who carried out such program during the preceding 2-year period fails to demonstrate, before the expiration of such 2-year period, that such program achieved substantial success in achieving the goals specified in the application submitted by such recipient to the State agency;'',*

*(P) by amending paragraph (23) to read as follows:*

*''(23) address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system;'',*

*(Q) by amending paragraph (24) to read as follows:*

*''(24) provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense—*

*''(A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;*

*''(B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile; and*

''(C) not later than 48 hours during which such juvenile is so held—

''(i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile; and

''(ii) such court shall conduct a hearing to determine—

''(I) whether there is reasonable cause to believe that such juvenile violated such order; and

''(II) the appropriate placement of such juvenile pending disposition of the violation alleged;'',

(R) in paragraph (25)—

(i) by striking ''1992'' and inserting ''2000'', and

(ii) by striking the period at the end and inserting a semicolon,

(S) by redesignating paragraphs (7) through (25) as paragraphs (6) through (24), respectively, and

(T) by adding at the end the following:

''(25) specify a percentage (if any), not to exceed 5 percent, of funds received by the State under section 222 (other than funds made available to the State advisory group under section 222(d)) that the State will reserve for expenditure by the State to provide incentive grants to units of general local government that reduce the caseload of probation officers within such units;

''(26) provide that the State, to the maximum extent practicable, will implement a system to ensure that if a juvenile is before a court in the juvenile justice system, public child welfare records (including child protective services records) relating to such juvenile that are on file in the geographical area under the jurisdiction of such court will be made known to such court;

''(27) establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing and implementing treatment plans for juvenile offenders; and

''(28) provide assurances that juvenile offenders whose placement is funded through section 472 of the Social Security Act (42 U.S.C. 672) receive the protections specified in section 471 of such Act (42 U.S.C. 671), including a case plan and case plan review as defined in section 475 of such Act (42 U.S.C. 675).'',

(2) by amending subsection (c) to read as follows:

''(c) If a State fails to comply with any of the applicable requirements of paragraphs (11), (12), (13), and (22) of subsection (a) in any fiscal year beginning after September 30, 2001, then—

''(1) subject to paragraph (2), the amount allocated to such State under section 222 for the subsequent fiscal year shall be reduced by not less than 20 percent for each such paragraph with respect to which the failure occurs, and

''(2) the State shall be ineligible to receive any allocation under such section for such fiscal year unless—

''(A) the State agrees to expend 50 percent of the amount allocated to the State for such fiscal year to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

''(B) the Administrator determines that the State—

''(i) has achieved substantial compliance with such applicable requirements with respect to which the State was not in compliance; and

''(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with such applicable requirements within a reasonable time.'',

(3) in subsection (d)—

(A) by striking ''allotment'' and inserting ''allocation'', and

(B) by striking ''subsection (a) (12)(A), (13), (14) and (23)'' each place it appears and inserting ''paragraphs (11), (12), (13), and (22) of subsection (a)'', and

(4) by adding at the end the following:

''(e) Notwithstanding any other provision of law, the Administrator shall establish appropriate administrative and supervisory board membership requirements for a State agency designated under subsection (a)(1) and permit the State advisory group appointed under subsection (a)(3) to operate as the supervisory board for such agency, at the discretion of the chief executive officer of the State.

''(f) TECHNICAL ASSISTANCE.—

''(1) IN GENERAL.—The Administrator shall provide technical and financial assistance to an eligible organization composed of member representatives of the State advisory groups appointed under subsection (a)(3) to assist such organization to carry out the functions specified in paragraph (2).

''(2) ASSISTANCE.—To be eligible to receive such assistance, such organization shall agree to carry out activities that include—

''(A) conducting an annual conference of such member representatives for purposes relating to the activities of such State advisory groups;

''(B) disseminating information, data, standards, advanced techniques, and program models;

''(C) reviewing Federal policies regarding juvenile justice and delinquency prevention;

''(D) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

''(E) advising the President and Congress with regard to State perspectives on the operation of the Office and Federal legislation pertaining to juvenile justice and delinquency prevention.''.

**SEC. 12210. JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM.**

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(1) by striking parts C, D, E, F, G, and H,

(2) by striking the 1st part I,

(3) by redesignating the 2d part I as part F, and

(4) by inserting after part B the following:

**''PART C—JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM**

**''SEC. 241. AUTHORITY TO MAKE GRANTS.**

''(a) GRANTS TO ELIGIBLE STATES.—The Administrator may make grants to eligible States, from funds allocated under section 242, for the purpose of providing financial assistance to eligible entities to carry out projects designed to prevent juvenile delinquency, including—

''(1) projects that provide treatment (including treatment for mental health problems) to juvenile offenders, and juveniles who are at risk of becoming juvenile offenders, who are victims of child abuse or neglect or who have experienced violence in their homes, at school, or in the community, and to their families, in order to reduce the likelihood that such juveniles will commit violations of law;

''(2) educational projects or supportive services for delinquent or other juveniles—

''(A) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations in educational settings;

''(B) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency;

''(C) to assist in identifying learning difficulties (including learning disabilities);

''(D) to prevent unwarranted and arbitrary suspensions and expulsions;

''(E) to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

''(F) which assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other juveniles with disabilities;

''(G) which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies; or

''(H) to provide services to juveniles with serious mental and emotional disturbances (SED) in need of mental health services;

''(3) projects which expand the use of probation officers—

''(A) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

''(B) to ensure that juveniles follow the terms of their probation;

''(4) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officers, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;

''(5) community-based projects and services (including literacy and social service programs) which work with juvenile offenders and juveniles who are at risk of becoming juvenile offenders, including those from families with limited English-speaking proficiency, their parents, their siblings, and other family members during and after incarceration of the juvenile offenders, in order to strengthen families, to allow juvenile offenders to be retained in their homes, and to prevent the involvement of other juvenile family members in delinquent activities;

''(6) projects designed to provide for the treatment (including mental health services) of juveniles for dependence on or abuse of alcohol, drugs, or other harmful substances;

''(7) projects which leverage funds to provide scholarships for postsecondary education and training for low-income juveniles who reside in neighborhoods with high rates of poverty, violence, and drug-related crimes;

''(8) projects which provide for an initial intake screening of each juvenile taken into custody—

''(A) to determine the likelihood that such juvenile will commit a subsequent offense; and

''(B) to provide appropriate interventions (including mental health services) to prevent such juvenile from committing subsequent offenses;

''(9) projects (including school- or community-based projects) that are designed to prevent, and reduce the rate of, the participation of juveniles in gangs that commit crimes (particularly violent crimes), that unlawfully use firearms and other weapons, or that unlawfully traffic in drugs and that involve, to the extent practicable, families and other community members (including law enforcement personnel and members of the business community) in the activities conducted under such projects;

''(10) comprehensive juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies (including collaboration on appropriate prenatal care for pregnant juvenile offenders), private nonprofit agencies, and public recreation agencies offering services to juveniles;

''(11) to develop, implement, and support, in conjunction with public and private agencies, organizations, and businesses, projects for the employment of juveniles and referral to job training programs (including referral to Federal job training programs);

''(12) delinquency prevention activities which involve youth clubs, sports, recreation and parks, peer counseling and teaching, the arts,

*leadership development, community service, volunteer service, before- and after-school programs, violence prevention activities, mediation skills training, camping, environmental education, ethnic or cultural enrichment, tutoring, and academic enrichment;*

*''(13) to establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing treatment plans for juvenile offenders;*

*''(14) programs that encourage social competencies, problem-solving skills, and communication skills, youth leadership, and civic involvement;*

*''(15) programs that focus on the needs of young girls at-risk of delinquency or status offenses;*

*''(16) projects which provide for—*

*''(A) an assessment by a qualified mental health professional of incarcerated juveniles who are suspected to be in need of mental health services;*

*''(B) the development of an individualized treatment plan for those incarcerated juveniles determined to be in need of such services;*

*''(C) the inclusion of a discharge plan for incarcerated juveniles receiving mental health services that addresses aftercare services; and*

*''(D) all juveniles receiving psychotropic medications to be under the care of a licensed mental health professional;*

*''(17) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;*

*''(18) programs related to the establishment and maintenance of a school violence hotline, based on a public-private partnership, that students and parents can use to report suspicious, violent, or threatening behavior to local school and law enforcement authorities;*

*''(19) programs (excluding programs to purchase guns from juveniles) designed to reduce the unlawful acquisition and illegal use of guns by juveniles, including partnerships between law enforcement agencies, health professionals, school officials, firearms manufacturers, consumer groups, faith-based groups and community organizations;*

*''(20) programs designed to prevent animal cruelty by juveniles and to counsel juveniles who commit animal cruelty offenses, including partnerships among law enforcement agencies, animal control officers, social services agencies, and school officials;*

*''(21) programs that provide suicide prevention services for incarcerated juveniles and for juveniles leaving the incarceration system;*

*''(22) programs to establish partnerships between State educational agencies and local educational agencies for the design and implementation of character education and training programs that reflect the values of parents, teachers, and local communities, and incorporate elements of good character, including honesty, citizenship, courage, justice, respect, personal responsibility, and trustworthiness;*

*''(23) programs that foster strong character development in at-risk juveniles and juveniles in the juvenile justice system;*

*''(24) local programs that provide for immediate psychological evaluation and follow-up treatment (including evaluation and treatment during a mandatory holding period for not less than 24 hours) for juveniles who bring a gun on school grounds without permission from appropriate school authorities; and*

*''(25) other activities that are likely to prevent juvenile delinquency.*

*''(b) GRANTS TO ELIGIBLE INDIAN TRIBES.—The Administrator may make grants to eligible Indian tribes from funds allocated under section 242(b), to carry out projects of the kinds described in subsection (a).*

***''SEC. 242. ALLOCATION.***

*''(a) ALLOCATION AMONG ELIGIBLE STATES.—Subject to subsection (b), funds appropriated to carry out this part shall be allocated among eligible States proportionately based on the population that is less than 18 years of age in the eligible States.*

*''(b) ALLOCATION AMONG INDIAN TRIBES COLLECTIVELY.—Before allocating funds under subsection (a) among eligible States, the Administrator shall allocate among eligible Indian tribes as determined under section 246(a), an aggregate amount equal to the amount such tribes would be allocated under subsection (a), and without regard to this subsection, if such tribes were treated collectively as an eligible State.*

***''SEC. 243. ELIGIBILITY OF STATES.***

*''(a) APPLICATION.—To be eligible to receive a grant under section 241, a State shall submit to the Administrator an application that contains the following:*

*''(1) An assurance that the State will use—*

*''(A) not more than 5 percent of such grant, in the aggregate, for—*

*''(i) the costs incurred by the State to carry out this part; and*

*''(ii) to evaluate, and provide technical assistance relating to, projects and activities carried out with funds provided under this part; and*

*''(B) the remainder of such grant to make grants under section 244.*

*''(2) An assurance that, and a detailed description of how, such grant will supplement, and not supplant State and local efforts to prevent juvenile delinquency.*

*''(3) An assurance that such application was prepared after consultation with and participation by the State advisory group, community-based organizations, and organizations in the local juvenile justice system, that carry out programs, projects, or activities to prevent juvenile delinquency.*

*''(4) An assurance that the State advisory group will be afforded the opportunity to review and comment on all grant applications submitted to the State agency.*

*''(5) An assurance that each eligible entity described in section 244 that receives an initial grant under section 244 to carry out a project or activity shall also receive an assurance from the State that such entity will receive from the State, for the subsequent fiscal year to carry out such project or activity, a grant under such section in an amount that is proportional, based on such initial grant and on the amount of the grant received under section 241 by the State for such subsequent fiscal year, but that does not exceed the amount specified for such subsequent fiscal year in such application as approved by the State.*

*''(6) Such other information and assurances as the Administrator may reasonably require by rule.*

*''(b) APPROVAL OF APPLICATIONS.—*

*''(1) APPROVAL REQUIRED.—Subject to paragraph (2), the Administrator shall approve an application, and amendments to such application submitted in subsequent fiscal years, that satisfy the requirements of subsection (a).*

*''(2) LIMITATION.—The Administrator may not approve such application (including amendments to such application) for a fiscal year unless—*

*''(A)(i) the State submitted a plan under section 223 for such fiscal year; and*

*''(ii) such plan is approved by the Administrator for such fiscal year; or*

*''(B) the Administrator waives the application of subparagraph (A) to such State for such fiscal year, after finding good cause for such a waiver.*

***''SEC. 244. GRANTS FOR LOCAL PROJECTS.***

*''(a) GRANTS BY STATES.—Using a grant received under section 241, a State may make grants to eligible entities whose applications are received by the State, and reviewed by the State advisory group, to carry out projects and activities described in section 241.*

*''(b) SPECIAL CONSIDERATION.—For purposes of making grants under subsection (a), the State shall give special consideration to eligible entities that—*

*''(1) propose to carry out such projects in geographical areas in which there is—*

*''(A) a disproportionately high level of serious crime committed by juveniles; or*

*''(B) a recent rapid increase in the number of nonstatus offenses committed by juveniles;*

*''(2)(A) agreed to carry out such projects or activities that are multidisciplinary and involve more than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles; or*

*''(B) represent communities that have a comprehensive plan designed to identify at-risk juveniles and to prevent or reduce the rate of juvenile delinquency, and that involve other entities operated by individuals who have a demonstrated history of involvement in activities designed to prevent juvenile delinquency; and*

*''(3) the amount of resources (in cash or in kind) such entities will provide to carry out such projects and activities.*

***''SEC. 245. ELIGIBILITY OF ENTITIES.***

*''(a) ELIGIBILITY.—Except as provided in subsection (b), to be eligible to receive a grant under section 244, a unit of general purpose local government, acting jointly with not fewer than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles, shall submit to the State an application that contains the following:*

*''(1) An assurance that such applicant will use such grant, and each such grant received for the subsequent fiscal year, to carry out throughout a 2-year period a project or activity described in reasonable detail, and of a kind described in one or more of paragraphs (1) through (25) of section 241(a) as specified in, such application.*

*''(2) A statement of the particular goals such project or activity is designed to achieve, and the methods such entity will use to achieve, and assess the achievement of, each of such goals.*

*''(3) A statement identifying the research (if any) such entity relied on in preparing such application.*

*''(b) LIMITATION.—If an eligible entity that receives a grant under section 244 to carry out a project or activity for a 2-year period, and receives technical assistance from the State or the Administrator after requesting such technical assistance (if any), fails to demonstrate, before the expiration of such 2-year period, that such project or such activity has achieved substantial success in achieving the goals specified in the application submitted by such entity to receive such grants, then such entity shall not be eligible to receive any subsequent grant under such section to continue to carry out such project or activity.*

***''SEC. 246. GRANTS TO INDIAN TRIBES.***

*''(a) ELIGIBILITY.—*

*''(1) APPLICATION.—To be eligible to receive a grant under section 241(b), an Indian tribe shall submit to the Administrator an application in accordance with this section, in such form and containing such information as the Administrator may require by rule.*

*''(2) PLANS.—Such application shall include a plan for conducting programs, projects, and activities described in section 241(a), which plan shall—*

*''(A) provide evidence that the applicant Indian tribe performs law enforcement functions (as determined by the Secretary of the Interior);*

*''(B) identify the juvenile justice and delinquency problems and juvenile delinquency prevention needs to be addressed by activities conducted with funds provided by the grant for which such application is submitted, by the Indian tribe in the geographical area under the jurisdiction of the Indian tribe;*

*''(C) provide for fiscal control and accounting procedures that—*

*''(i) are necessary to ensure the prudent use, proper disbursement, and accounting of grants received by applicants under this section; and*

''(ii) are consistent with the requirement specified in subparagraph (B); and

''(D) comply with the requirements specified in section 223(a) (excluding any requirement relating to consultation with a State advisory group) and with the requirements specified in section 222(c); and

''(E) contain such other information, and be subject to such additional requirements, as the Administrator may reasonably require by rule to ensure the effectiveness of the projects for which grants are made under section 241(b).

''(b) FACTORS FOR CONSIDERATION.—For the purpose of selecting eligible applicants to receive grants under section 241(b), the Administrator shall consider—

''(1) the resources that are available to each applicant Indian tribe that will assist, and be coordinated with, the overall juvenile justice system of the Indian tribe; and

''(2) with respect to each such applicant—

''(A) the juvenile population; and

''(B) the population and the entities that will be served by projects proposed to be carried out with the grant for which the application is submitted.

''(c) GRANT PROCESS.—

''(1) SELECTION OF GRANT RECIPIENTS.—

''(A) SELECTION REQUIREMENTS.—Except as provided in paragraph (2), the Administrator shall—

''(i) make grants under this section on a competitive basis; and

''(ii) specify in writing to each applicant selected to receive a grant under this section, the terms and conditions on which such grant is made to such applicant.

''(B) PERIOD OF GRANT.—A grant made under this section shall be available for expenditure during a 2–year period.

''(2) EXCEPTION.—If—

''(A) in the 2-year period for which a grant made under this section shall be expended, the recipient of such grant applies to receive a subsequent grant under this section; and

''(B) the Administrator determines that such recipient performed during the year preceding the 2–year period for which such recipient applies to receive such subsequent grant satisfactorily and in accordance with the terms and conditions applicable to the grant received;

then the Administrator may waive the application of the competition-based requirement specified in paragraph (1)(A)(i) and may allow the applicant to incorporate by reference in the current application the text of the plan contained in the recipient's most recent application previously approved under this section.

''(3) AUTHORITY TO MODIFY APPLICATION PROCESS FOR SUBSEQUENT GRANTS.—The Administrator may modify by rule the operation of subsection (a) with respect to the submission and contents of applications for subsequent grants described in paragraph (2).

''(d) REPORTING REQUIREMENT.—Each Indian tribe that receives a grant under this section shall be subject to the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

''(e) MATCHING REQUIREMENT.—(1) Funds appropriated for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of any program or project with a matching requirement funded under this section.

''(2) Paragraph (1) shall not apply with respect to funds appropriated before the date of the enactment of the Juvenile Justice and Delinquency Prevention Act of 2002.

''(3) If the Administrator determines that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.''.

**SEC. 12211. RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING.**

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by inserting after part C, as added by section 12510, the following:

''PART D—RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING

**''SEC. 251. RESEARCH AND EVALUATION; STATISTICAL ANALYSES; INFORMATION DISSEMINATION.**

''(a) RESEARCH AND EVALUATION.—(1) The Administrator may—

''(A) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

''(B) conduct research or evaluation in juvenile justice matters, for the purpose of providing research and evaluation relating to—

''(i) the prevention, reduction, and control of juvenile delinquency and serious crime committed by juveniles;

''(ii) the link between juvenile delinquency and the incarceration of members of the families of juveniles;

''(iii) successful efforts to prevent first-time minor offenders from committing subsequent involvement in serious crime;

''(iv) successful efforts to prevent recidivism;

''(v) the juvenile justice system;

''(vi) juvenile violence;

''(vii) appropriate mental health services for juveniles and youth at risk of participating in delinquent activities;

''(viii) reducing the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups;

''(ix) evaluating services, treatment, and aftercare placement of juveniles who were under the care of the State child protection system before their placement in the juvenile justice system;

''(x) determining—

''(I) the frequency, seriousness, and incidence of drug use by youth in schools and communities in the States using, if appropriate, data submitted by the States pursuant to this subparagraph and subsection (b); and

''(II) the frequency, degree of harm, and morbidity of violent incidents, particularly firearm-related injuries and fatalities, by youth in schools and communities in the States, including information with respect to—

''(aa) the relationship between victims and perpetrators;

''(bb) demographic characteristics of victims and perpetrators; and

''(cc) the type of weapons used in incidents, as classified in the Uniform Crime Reports of the Federal Bureau of Investigation; and

''(xi) other purposes consistent with the purposes of this title and title I.

''(2) The Administrator shall ensure that an equitable amount of funds available to carry out paragraph (1)(B) is used for research and evaluation relating to the prevention of juvenile delinquency.

''(3) Nothing in this subsection shall be construed to permit the development of a national database of personally identifiable information on individuals involved in studies, or in data-collection efforts, carried out under paragraph (1)(B)(x).

''(4) Not later than 1 year after the date of enactment of this paragraph,the Administrator shall conduct a study with respect to juveniles who, prior to placement in the juvenile justice system, were under the care or custody of the State child welfare system, and to juveniles who are unable to return to their family after completing their disposition in the juvenile justice system and who remain wards of the State. Such study shall include—

''(A) the number of juveniles in each category;

''(B) the extent to which State juvenile justice systems and child welfare systems are coordinating services and treatment for such juveniles;

''(C) the Federal and local sources of funds used for placements and post-placement services;

''(D) barriers faced by State in providing services to these juveniles;

''(E) the types of post-placement services used;

''(F) the frequency of case plans and case plan reviews; and

''(G) the extent to which case plans identify and address permanency and placement barriers and treatment plans.

''(b) STATISTICAL ANALYSES.—The Administrator may—

''(1) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

''(2) undertake statistical work in juvenile justice matters, for the purpose of providing for the collection, analysis, and dissemination of statistical data and information relating to juvenile delinquency and serious crimes committed by juveniles, to the juvenile justice system, to juvenile violence, and to other purposes consistent with the purposes of this title and title I.

''(c) GRANT AUTHORITY AND COMPETITIVE SELECTION PROCESS.—The Administrator may make grants and enter into contracts with public or private agencies, organizations, or individuals and shall use a competitive process, established by rule by the Administrator, to carry out subsections (a) and (b).

''(d) IMPLEMENTATION OF AGREEMENTS.—A Federal agency that makes an agreement under subsections (a)(1)(B) and (b)(2) with the Administrator may carry out such agreement directly or by making grants to or contracts with public and private agencies, institutions, and organizations.

''(e) INFORMATION DISSEMINATION.—The Administrator may—

''(1) review reports and data relating to the juvenile justice system in the United States and in foreign nations (as appropriate), collect data and information from studies and research into all aspects of juvenile delinquency (including the causes, prevention, and treatment of juvenile delinquency) and serious crimes committed by juveniles;

''(2) establish and operate, directly or by contract, a clearinghouse and information center for the preparation, publication, and dissemination of information relating to juvenile delinquency, including State and local prevention and treatment programs, plans, resources, and training and technical assistance programs; and

''(3) make grants and contracts with public and private agencies, institutions, and organizations, for the purpose of disseminating information to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, the courts, corrections, schools, and related services, in the establishment, implementation, and operation of projects and activities for which financial assistance is provided under this title.

**''SEC. 252. TRAINING AND TECHNICAL ASSISTANCE.**

''(a) TRAINING.—The Administrator may—

''(1) develop and carry out projects for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 102; and

''(2) make grants to and contracts with public and private agencies, institutions, and organizations for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 102.

''(b) TECHNICAL ASSISTANCE.—The Administrator may—

''(1) develop and implement projects for the purpose of providing technical assistance to representatives and personnel of public and private agencies and organizations, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this title; and

''(2) make grants to and contracts with public and private agencies, institutions, and organizations, for the purpose of providing technical assistance to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this title.

''(c) TRAINING AND TECHNICAL ASSISTANCE TO MENTAL HEALTH PROFESSIONALS AND LAW ENFORCEMENT PERSONNEL.—The Administrator shall provide training and technical assistance to mental health professionals and law enforcement personnel (including public defenders, police officers, probation officers, judges, parole officials, and correctional officers) to address or to promote the development, testing, or demonstration of promising or innovative models (including model juvenile and family courts), programs, or delivery systems that address the needs of juveniles who are alleged or adjudicated delinquent and who, as a result of such status, are placed in secure detention or confinement or in nonsecure residential placements.''.

**SEC. 12212. DEMONSTRATION PROJECTS.**

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by inserting after part D, as added by section 12511, the following:

**''PART E—DEVELOPING, TESTING, AND DEMONSTRATING PROMISING NEW INITIATIVES AND PROGRAMS**

**''SEC. 261. GRANTS AND PROJECTS.**

''(a) AUTHORITY TO MAKE GRANTS.—The Administrator may make grants to and contracts with States, units of general local government, Indian tribal governments, public and private agencies, organizations, and individuals, or combinations thereof, to carry out projects for the development, testing, and demonstration of promising initiatives and programs for the prevention, control, or reduction of juvenile delinquency. The Administrator shall ensure that, to the extent reasonable and practicable, such grants are made to achieve an equitable geographical distribution of such projects throughout the United States.

''(b) USE OF GRANTS.—A grant made under subsection (a) may be used to pay all or part of the cost of the project for which such grant is made.

**''SEC. 262. GRANTS FOR TECHNICAL ASSISTANCE.**

''The Administrator may make grants to and contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local government, Indian tribal governments, local private entities or agencies, or any combination thereof, to carry out the projects for which grants are made under section 261.

**''SEC. 263. ELIGIBILITY.**

''To be eligible to receive a grant made under this part, a public or private agency, Indian tribal government, organization, institution, individual, or combination thereof shall submit an application to the Administrator at such time, in such form, and containing such information as the Administrator may reasonably require by rule.

**''SEC. 264. REPORTS.**

''Recipients of grants made under this part shall submit to the Administrator such reports as may be reasonably requested by the Administrator to describe progress achieved in carrying out the projects for which such grants are made.''.

**SEC. 12213. AUTHORIZATION OF APPROPRIATIONS.**

Section 299 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) by striking subsection (e), and

(2) by striking subsections (a), (b), and (c), and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS FOR TITLE II (EXCLUDING PARTS C AND E).—(1) There are authorized to be appropriated to carry out this title such sums as may be appropriate for fiscal years 2003, 2004, 2005, 2006, and 2007.

''(2) Of such sums as are appropriated for a fiscal year to carry out this title (other than parts C and E)—

''(A) not more than 5 percent shall be available to carry out part A;

''(B) not less than 80 percent shall be available to carry out part B; and

''(C) not more than 15 percent shall be available to carry out part D.

''(b) AUTHORIZATION OF APPROPRIATIONS FOR PART C.—There are authorized to be appropriated to carry out part C such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.

''(c) AUTHORIZATION OF APPROPRIATIONS FOR PART E.—There are authorized to be appropriated to carry out part E, and authorized to remain available until expended, such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.''.

**SEC. 12214. ADMINISTRATIVE AUTHORITY.**

Section 299A of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5672) is amended—

(1) in subsection (d) by striking ''as are consistent with the purpose of this Act'' and inserting ''only to the extent necessary to ensure that there is compliance with the specific requirements of this title or to respond to requests for clarification and guidance relating to such compliance'', and

(2) by adding at the end the following:

''(e) If a State requires by law compliance with the requirements described in paragraphs (11), (12), and (13) of section 223(a), then for the period such law is in effect in such State such State shall be rebuttably presumed to satisfy such requirements.''.

**SEC. 12215. USE OF FUNDS.**

Section 299C(c) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5674(c)) is amended to read as follows:

''(c) No funds may be paid under this title to a residential program (excluding a program in a private residence) unless—

''(1) there is in effect in the State in which such placement or care is provided, a requirement that the provider of such placement or such care may be licensed only after satisfying, at a minimum, explicit standards of discipline that prohibit neglect, and physical and mental abuse, as defined by State law;

''(2) such provider is licensed as described in paragraph (1) by the State in which such placement or care is provided; and

''(3) in a case involving a provider located in a State that is different from the State where the order for placement originates, the chief administrative officer of the public agency or the officer of the court placing the juvenile certifies that such provider—

''(A) satisfies the originating State's explicit licensing standards of discipline that prohibit neglect, physical and mental abuse, and standards for education and health care as defined by that State's law; and

''(B) otherwise complies with the Interstate Compact on the Placement of Children as entered into by such other State.''.

**SEC. 12216. LIMITATIONS ON USE OF FUNDS.**

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510, is amended adding at the end the following:

**''SEC. 299F. LIMITATIONS ON USE OF FUNDS.**

''None of the funds made available to carry out this title may be used to advocate for, or support, the unsecured release of juveniles who are charged with a violent crime.''.

**SEC. 12217. RULES OF CONSTRUCTION.**

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by section 12516, is amended adding at the end the following:

**''SEC. 299G. RULES OF CONSTRUCTION.**

''Nothing in this title or title I shall be construed—

''(1) to prevent financial assistance from being awarded through grants under this title to any otherwise eligible organization; or

''(2) to modify or affect any Federal or State law relating to collective bargaining rights of employees.''.

**SEC. 12218. LEASING SURPLUS FEDERAL PROPERTY.**

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by sections 12516 and 12517, is amended adding at the end the following:

**''SEC. 299H. LEASING SURPLUS FEDERAL PROPERTY.**

''The Administrator may receive surplus Federal property (including facilities) and may lease such property to States and units of general local government for use in or as facilities for juvenile offenders, or for use in or as facilities for delinquency prevention and treatment activities.''.

**SEC. 12219. ISSUANCE OF RULES.**

Part F of title II or the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by sections 12516, 12517, and 12518, is amended adding at the end the following:

**''SEC. 299I. ISSUANCE OF RULES.**

''The Administrator shall issue rules to carry out this title, including rules that establish procedures and methods for making grants and contracts, and distributing funds available, to carry out this title.''.

**SEC. 12220. CONTENT OF MATERIALS.**

Part F of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671 et seq.), as so redesignated by section 12510 and amended by sections 12516, 12517, 12518, and 12519, is amended by adding at the end the following:

**''SEC. 299J. CONTENT OF MATERIALS.**

''Materials produced, procured, or distributed both using funds appropriated to carry out this Act and for the purpose of preventing hate crimes that result in acts of physical violence, shall not recommend or require any action that abridges or infringes upon the constitutionally protected rights of free speech, religion, or equal protection of juveniles or of their parents or legal guardians.''.

**SEC. 12221. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) TECHNICAL AMENDMENTS.—The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended—

(1) in section 202(b) by striking ''prescribed for GS–18 of the General Schedule by section 5332'' and inserting ''payable under section 5376'',

(2) in section 221(b)(2) by striking the last sentence,

(3) in section 299D by striking subsection (d), and

(4) by striking title IV, as originally enacted by Public Law 93–415 (88 Stat. 1132–1143).

(b) CONFORMING AMENDMENTS.—(1) The Victims of Child Abuse Act of 1990 (42 U.S.C. 13001 et seq.) is amended—

*(A) in section 214(b)(1) by striking ''262, 293, and 296 of subpart II of title II'' and inserting ''299B and 299E'',*

*(B) in section 214A(c)(1) by striking ''262, 293, and 296 of subpart II of title II'' and inserting ''299B and 299E'',*

*(C) in section 217(c)(1) by striking ''sections 262, 293, and 296 of subpart II of title II'' and inserting ''sections 299B and 299E'', and*

*(D) in section 223(c) by striking ''section 262, 293, and 296'' and inserting ''sections 262, 299B, and 299E''.*

*(2) Section 404(a)(5)(E) of the Missing Children's Assistance Act (42 U.S.C. 5773) is amended by striking ''section 313'' and inserting ''section 331''.*

***SEC. 12222. INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS.***

*(a) AMENDMENT.—Title V of the of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5781–5785), as added by Public Law 102–586, is amended to read as follows:*

***''TITLE V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS***

***''SEC. 501. SHORT TITLE.***

*''This title may be cited as the 'Incentive Grants for Local Delinquency Prevention Programs Act of 2002'.*

***''SEC. 502. DEFINITION.***

*''In this title, the term 'State advisory group' means the advisory group appointed by the chief executive officer of a State under a plan described in section 223(a).*

***''SEC. 503. DUTIES AND FUNCTIONS OF THE ADMINISTRATOR.***

*''The Administrator shall—*

*''(1) issue such rules as are necessary or appropriate to carry out this title;*

*''(2) make such arrangements as are necessary and appropriate to facilitate coordination and policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);*

*''(3) provide adequate staff and resources necessary to properly carry out this title; and*

*''(4) not later than 180 days after the end of each fiscal year, submit a report to the chairman of the Committee on Education and the Workforce of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate—*

*''(A) describing activities and accomplishments of grant activities funded under this title;*

*''(B) describing procedures followed to disseminate grant activity products and research findings;*

*''(C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and*

*''(D) identifying successful approaches and making recommendations for future activities to be conducted under this title.*

***''SEC. 504. GRANTS FOR DELINQUENCY PREVENTION PROGRAMS.***

*''(a) PURPOSES.—The Administrator may make grants to a State, to be transmitted through the State advisory group to units of local government that meet the requirements of subsection (b), for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to juveniles and their families of—*

*''(1) alcohol and substance abuse prevention services;*

*''(2) tutoring and remedial education, especially in reading and mathematics;*

*''(3) child and adolescent health and mental health services;*

*''(4) recreation services;*

*''(5) leadership and youth development activities;*

*''(6) the teaching that people are and should be held accountable for their actions;*

*''(7) assistance in the development of job training skills; and*

*''(8) other data-driven evidence based prevention programs.*

*''(b) ELIGIBILITY.—The requirements of this subsection are met with respect to a unit of general local government if—*

*''(1) the unit is in compliance with the requirements of part B of title II;*

*''(2) the unit has submitted to the State advisory group a minimum 3-year comprehensive plan outlining the unit's local front end plans for investment for delinquency prevention and early intervention activities;*

*''(3) the unit has included in its application to the Administrator for formula grant funds a summary of the minimum 3-year comprehensive plan described in paragraph (2);*

*''(4) pursuant to its minimum 3-year comprehensive plan, the unit has appointed a local policy board of not fewer than 15 and not more than 21 members, with balanced representation of public agencies and private nonprofit organizations serving juveniles, their families, and business and industry;*

*''(5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk juveniles and their families, including such programs as nutrition, energy assistance, and housing;*

*''(6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this title; and*

*''(7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.*

*''(c) PRIORITY.—In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—*

*''(1) plans for service and agency coordination and collaboration including the colocation of services;*

*''(2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities;*

*''(3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention;*

*''(4) coordinating and collaborating with programs established in local communities for delinquency prevention under part C of this subtitle; and*

*''(5) developing data-driven prevention plans, employing evidence-based prevention strategies, and conducting program evaluations to determine impact and effectiveness.*

***''SEC. 505. AUTHORIZATION OF APPROPRIATIONS.***

*''There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal years 2004, 2005, 2006, 2007, and 2008.''.*

*(b) EFFECTIVE DATE; APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall take effect on October 1, 2002, and shall not apply with respect to grants made before such date.*

***SEC. 12223. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.***

*(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.*

*(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall apply only with respect to fiscal years beginning after September 30, 2002.*

***Subtitle C—Juvenile Disposition Hearing***

***SEC. 12301. JUVENILE DISPOSITION HEARING.***

*Section 5037 of title 18, United States Code, is amended—*

*(1) in subsection (a)—*

*(A) in the second sentence—*

*(i) by striking ''enter an order of restitution pursuant to section 3556,''; and*

*(ii) by inserting after ''official detention'' the following: ''which may include a term of juvenile delinquent supervision to follow detention''; and*

*(B) by inserting after the second sentence the following: ''In addition, the court may enter an order of restitution pursuant to section 3556.'';*

*(2) in subsection (b)—*

*(A) by striking the last sentence; and*

*(B) by adding at the end the following:*

*''The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on probation. If the juvenile violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 28, revoke the term of probation and order a term of official detention. The term of official detention authorized upon revocation of probation shall not exceed the terms authorized in section 5037(c)(2) (A) and (B). The application of sections 5037(c)(2) (A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of imprisonment may continue beyond the juvenile's 24th birthday. A term of official detention may include a term of juvenile delinquent supervision.'';*

*(3) in subsection (c)(1)—*

*(A) in subparagraph (A), by striking ''or'';*

*(B) by redesignating subparagraph (B) as subparagraph (C); and*

*(C) by inserting after subparagraph (A) the following:*

*''(B) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or'';*

*(4) in subsection (c)(2)(A), by striking ''five years; or'' and inserting: ''the lesser of—*

*''(i) five years; or*

*''(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or'';*

*(5) in subsection (c)(2)(B)—*

*(A) in clause (i), by striking ''or'';*

*(B) by redesignating clause (ii) as clause (iii); and*

*(C) by inserting after clause (i) the following:*

*''(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or'';*

*(6) by redesignating subsection (d) as subsection (e); and*

*(7) by inserting after subsection (c) the following:*

*''(d)(1) The court, in ordering a term of official detention, may include the requirement that the juvenile be placed on a term of juvenile delinquent supervision after official detention.*

*''(2) The term of juvenile delinquent supervision that may be ordered for a juvenile found to be a juvenile delinquent may not extend—*

''(A) in the case of a juvenile who is less than 18 years old, a term that extends beyond the date when the juvenile becomes 21 years old; or

''(B) in the case of a juvenile who is between 18 and 21 years old, a term that extends beyond the maximum term of official detention set forth in section 5037(c)(2) (A) and (B), less the term of official detention ordered.

''(3) The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on juvenile delinquent supervision.

''(4) The court may modify, reduce, or enlarge the conditions of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision after a dispositional hearing and after consideration of the provisions of section 3563 regarding the initial setting of the conditions of probation.

''(5) If the juvenile violates a condition of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 18, revoke the term of supervision and order a term of official detention. The term of official detention which is authorized upon revocation of juvenile delinquent supervision shall not exceed the term authorized in section 5037(c)(2) (A) and (B), less any term of official detention previously ordered. The application of sections 5037(c)(2) (A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years old shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday.

''(6) When a term of juvenile delinquent supervision is revoked and the juvenile is committed to official detention, the court may include a requirement that the juvenile be placed on a term of juvenile delinquent supervision. Any term of juvenile delinquent supervision ordered following revocation for a juvenile who is over the age of 21 years old at the time of the revocation proceeding shall be in accordance with the provisions of section 5037(d)(1), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of juvenile delinquent supervision may continue beyond the juvenile's 26th birthday, and in any other case, no term of juvenile delinquent supervision may continue beyond the juvenile's 24th birthday.''.

## TITLE III—INTELLECTUAL PROPERTY

### Subtitle A—Patent and Trademark Office Authorization

**SEC. 13101. SHORT TITLE.**

This subtitle may be cited as the ''Patent and Trademark Office Authorization Act of 2002''.

**SEC. 13102. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.**

(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

(1) title 35, United States Code; and

(2) the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

(1) the Committees on Appropriations and Judiciary of the Senate; and

(2) the Committees on Appropriations and Judiciary of the House of Representatives.

**SEC. 13103. ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS.**

(a) ELECTRONIC FILING AND PROCESSING.—The Director shall, beginning not later than 90 days after the date of enactment of this Act, and during the 3-year period thereafter, develop an electronic system for the filing and processing of patent and trademark applications, that—

(1) is user friendly; and

(2) includes the necessary infrastructure—

(A) to allow examiners and applicants to send all communications electronically; and

(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

(b) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized under section 13102, there is authorized to be appropriated to carry out subsection (a) of this section not more than $50,000,000 for each of fiscal years 2003, 2004, and 2005. Amounts made available pursuant to this subsection shall remain available until expended.

**SEC. 13104. STRATEGIC PLAN.**

(a) DEVELOPMENT OF PLAN.—

(1) IN GENERAL.—The Director shall, in close consultation with the Patent Public Advisory Committee and the Trademark Public Advisory Committee, develop a strategic plan that sets forth the goals and methods by which the United States Patent and Trademark Office will, during the 5-year period beginning on January 1, 2003—

(A) enhance patent and trademark quality;

(B) reduce patent and trademark pendency; and

(C) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes, including, in addition to the elements set forth in section 13103, searching, examining, communicating, publishing, and making publicly available, patents and trademark registrations.

(2) CONTENTS AND CONSULTATION.—The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan. The Director shall consult with the Public Advisory Committees with respect to the development of each aspect of the strategic plan.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—Not later than 4 months after the date of enactment of this Act, the Director shall submit the plan developed under subsection (a) to the Committees on the Judiciary of the Senate and the House of Representatives.

**SEC. 13105. DETERMINATION OF SUBSTANTIAL NEW QUESTION OF PATENTABILITY IN REEXAMINATION PROCEEDINGS.**

(a) IN GENERAL.—Sections 303(a) and 312(a) of title 35, United States Code, are each amended by adding at the end the following: ''The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of enactment of this Act.

**SEC. 13106. APPEALS IN INTER PARTES REEXAMINATION PROCEEDINGS.**

(a) APPEALS BY THIRD-PARTY REQUESTER IN PROCEEDINGS.—Section 315(b) of title 35, United States Code, is amended to read as follows:

''(b) THIRD-PARTY REQUESTER.—A third-party requester—

''(1) may appeal under the provisions of section 134, and may appeal under the provisions of sections 141 through 144, with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent; and

''(2) may, subject to subsection (c), be a party to any appeal taken by the patent owner under the provisions of section 134 or sections 141 through 144.''.

(b) APPEAL TO BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 134(c) of title 35, United States Code, is amended by striking the last sentence.

(c) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended in the third sentence by inserting '', or a third-party requester in an inter partes reexamination proceeding, who is'' after ''patent owner''.

(d) EFFECTIVE DATE.—The amendments made by this section apply with respect to any reexamination proceeding commenced on or after the date of enactment of this Act.

### Subtitle B—Intellectual Property and High Technology Technical Amendments

**SEC. 13201. SHORT TITLE.**

This subtitle may be cited as the ''Intellectual Property and High Technology Technical Amendments Act of 2002''.

**SEC. 13202. CLARIFICATION OF REEXAMINATION PROCEDURE ACT OF 1999; TECHNICAL AMENDMENTS.**

(a) OPTIONAL INTER PARTES REEXAMINATION PROCEDURES.—Title 35, United States Code, is amended as follows:

(1) Section 311 is amended—

(A) in subsection (a), by striking ''person'' and inserting ''third-party requester''; and

(B) in subsection (c), by striking ''Unless the requesting person is the owner of the patent, the'' and inserting ''The''.

(2) Section 312 is amended—

(A) in subsection (a), by striking the second sentence; and

(B) in subsection (b), by striking '', if any''.

(3) Section 314(b)(1) is amended—

(A) by striking ''(1) This'' and all that follows through ''(2)'' and inserting ''(1)'';

(B) by striking ''the third-party requester shall receive a copy'' and inserting ''the Office shall send to the third-party requester a copy''; and

(C) by redesignating paragraph (3) as paragraph (2).

(4) Section 315(c) is amended by striking ''United States Code,''.

(5) Section 317 is amended—

(A) in subsection (a), by striking ''patent owner nor the third-party requester, if any, nor privies of either'' and inserting ''third-party requester nor its privies''; and

(B) in subsection (b), by striking ''United States Code,''.

(b) CONFORMING AMENDMENTS.—

(1) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Subsections (a), (b), and (c) of section 134 of title 35, United States Code, are each amended by striking ''administrative patent judge'' each place it appears and inserting ''primary examiner''.

(2) PROCEEDING ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: ''In an ex parte case or any reexamination case, the Director shall submit to the court in writing the grounds for the decision of the Patent and

*Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.''.*

*(c) CLERICAL AMENDMENTS.—*

*(1) Section 4604(a) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is amended by striking ''Part 3'' and inserting ''Part III''.*

*(2) Section 4604(b) of that Act is amended by striking ''title 25'' and inserting ''title 35''.*

*(d) EFFECTIVE DATE.—The amendments made by section 4605 (b), (c), and (e) of the Intellectual Property and Communications Omnibus Reform Act, as enacted by section 1000(a)(9) of Public Law 106–113, shall apply to any reexamination filed in the United States Patent and Trademark Office on or after the date of enactment of Public Law 106–113.*

***SEC. 13203. PATENT AND TRADEMARK EFFICIENCY ACT AMENDMENTS.***

*(a) DEPUTY COMMISSIONER.—*

*(1) Section 17(b) of the Act of July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1067(b)), is amended by inserting ''the Deputy Commissioner,'' after ''Commissioner,''.*

*(2) Section 6(a) of title 35, United States Code, is amended by inserting ''the Deputy Commissioner,'' after ''Commissioner,''.*

*(b) PUBLIC ADVISORY COMMITTEES.—Section 5 of title 35, United States Code, is amended—*

*(1) in subsection (i), by inserting '', privileged,'' after ''personnel''; and*

*(2) by adding at the end the following new subsection:*

*''(j) INAPPLICABILITY OF PATENT PROHIBITION.—Section 4 shall not apply to voting members of the Advisory Committees.''.*

*(c) MISCELLANEOUS.—Section 153 of title 35, United States Code, is amended by striking ''and attested by an officer of the Patent and Trademark Office designated by the Director,''.*

***SEC. 13204. DOMESTIC PUBLICATION OF FOREIGN FILED PATENT APPLICATIONS ACT OF 1999 AMENDMENTS.***

*Section 154(d)(4)(A) of title 35, United States Code, as in effect on November 29, 2000, is amended—*

*(1) by striking ''on which the Patent and Trademark Office receives a copy of the'' and inserting ''of''; and*

*(2) by striking ''international application'' the last place it appears and inserting ''publication''.*

***SEC. 13205. DOMESTIC PUBLICATION OF PATENT APPLICATIONS PUBLISHED ABROAD.***

*Subtitle E of title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is amended as follows:*

*(1) Section 4505 is amended to read as follows:*

***''SEC. 4505. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.***

*''Section 102(e) of title 35, United States Code, is amended to read as follows:*

*'''(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or'.''.*

*(2) Section 4507 is amended—*

*(A) in paragraph (1), by striking ''Section 11'' and inserting ''Section 10'';*

*(B) in paragraph (2), by striking ''Section 12'' and inserting ''Section 11''.*

*(C) in paragraph (3), by striking ''Section 13'' and inserting ''Section 12'';*

*(D) in paragraph (4), by striking ''12 and 13'' and inserting ''11 and 12'';*

*(E) in section 374 of title 35, United States Code, as amended by paragraph (10), by striking ''confer the same rights and shall have the same effect under this title as an application for patent published'' and inserting ''be deemed a publication''; and*

*(F) by adding at the end the following:*

*''(12) The item relating to section 374 in the table of contents for chapter 37 of title 35, United States Code, is amended to read as follows:*

*'''374. Publication of international application.'''.*

*(3) Section 4508 is amended to read as follows:*

***''SEC. 4508. EFFECTIVE DATE.***

*''Except as otherwise provided in this section, sections 4502 through 4504 and 4506 through 4507, and the amendments made by such sections, shall be effective as of November 29, 2000, and shall apply only to applications (including international applications designating the United States) filed on or after that date. The amendments made by section 4504 shall additionally apply to any pending application filed before November 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Director. Except as otherwise provided in this section, the amendments made by section 4505 shall be effective as of November 29, 2000 and shall apply to all patents and all applications for patents pending on or filed after November 29, 2000. Patents resulting from an international application filed before November 29, 2000 and applications published pursuant to section 122(b) or Article 21(2) of the treaty defined in section 351(a) resulting from an international application filed before November 29, 2000 shall not be effective as prior art as of the filing date of the international application; however, such patents shall be effective as prior art in accordance with section 102(e) in effect on November 28, 2000.''.*

***SEC. 13206. MISCELLANEOUS CLERICAL AMENDMENTS.***

*(a) AMENDMENTS TO TITLE 35.—The following provisions of title 35, United States Code, are amended:*

*(1) Section 2(b) is amended in paragraphs (2)(B) and (4)(B), by striking '', United States Code''.*

*(2) Section 3 is amended—*

*(A) in subsection (a)(2)(B), by striking ''United States Code,'';*

*(B) in subsection (b)(2)—*

*(i) in the first sentence of subparagraph (A), by striking '', United States Code'';*

*(ii) in the first sentence of subparagraph (B)—*

*(I) by striking ''United States Code,''; and*

*(II) by striking '', United States Code'';*

*(iii) in the second sentence of subparagraph (B)—*

*(I) by striking ''United States Code,''; and*

*(II) by striking '', United States Code.'' and inserting a period;*

*(iv) in the last sentence of subparagraph (B), by striking '', United States Code''; and*

*(v) in subparagraph (C), by striking '', United States Code''; and*

*(C) in subsection (c)—*

*(i) in the subsection caption, by striking '', UNITED STATES CODE''; and*

*(ii) by striking ''United States Code,''.*

*(3) Section 5 is amended in subsections (e) and (g), by striking '', United States Code'' each place it appears.*

*(4) The table of chapters for part I is amended in the item relating to chapter 3, by striking ''**before**'' and inserting ''**Before**''.*

*(5) The item relating to section 21 in the table of contents for chapter 2 is amended to read as follows:*

*''21. Filing date and day for taking action.''.*

*(6) The item relating to chapter 12 in the table of chapters for part II is amended to read as follows:*

***''12. Examination of Application ..... 131''.***

*(7) The item relating to section 116 in the table of contents for chapter 11 is amended to read as follows:*

*''116. Inventors.''.*

*(8) Section 154(b)(4) is amended by striking '', United States Code,''.*

*(9) Section 156 is amended—*

*(A) in subsection (b)(3)(B), by striking ''paragraphs'' and inserting ''paragraph'';*

*(B) in subsection (d)(2)(B)(i), by striking ''below the office'' and inserting ''below the Office''; and*

*(C) in subsection (g)(6)(B)(iii), by striking ''submittted'' and inserting ''submitted''.*

*(10) The item relating to section 183 in the table of contents for chapter 17 is amended by striking ''of'' and inserting ''to''.*

*(11) Section 185 is amended by striking the second period at the end of the section.*

*(12) Section 201(a) is amended—*

*(A) by striking ''United States Code,''; and*

*(B) by striking ''5, United States Code.'' and inserting ''5.''.*

*(13) Section 202 is amended—*

*(A) in subsection (b)(4), by striking ''last paragraph of section 203(2)'' and inserting ''section 203(b)''; and*

*(B) in subsection (c)—*

*(i) in paragraph (4), by striking ''rights;'' and inserting ''rights,''; and*

*(ii) in paragraph (5), by striking ''of the United States Code''.*

*(14) Section 203 is amended—*

*(A) in paragraph (2)—*

*(i) by striking ''(2)'' and inserting ''(b)'';*

*(ii) by striking the quotation marks and comma before ''as appropriate''; and*

*(iii) by striking ''paragraphs (a) and (c)'' and inserting ''paragraphs (1) and (3) of subsection (a)''; and*

*(B) in the first paragraph—*

*(i) by striking ''(a)'', ''(b)'', ''(c)'', and ''(d)'' and inserting ''(1)'', ''(2)'', ''(3)'', and ''(4)'', respectively; and*

*(ii) by striking ''(1.'' and inserting ''(a)''.*

*(15) Section 209 is amended in subsections (d)(2) and (f), by striking ''of the United States Code''.*

*(16) Section 210 is amended—*

*(A) in subsection (a)—*

*(i) in paragraph (11), by striking ''5901'' and inserting ''5908''; and*

*(ii) in paragraph (20) by striking ''178(j)'' and inserting ''178j''; and*

*(B) in subsection (c)—*

*(i) by striking ''paragraph 202(c)(4)'' and inserting ''section 202(c)(4)''; and*

*(ii) by striking ''title..'' and inserting ''title.''.*

*(17) The item relating to chapter 29 in the table of chapters for part III is amended by inserting a comma after ''**Patent**''.*

*(18) The item relating to section 256 in the table of contents for chapter 25 is amended to read as follows:*

*''256. Correction of named inventor.''.*

*(19) Section 294 is amended—*

*(A) in subsection (b), by striking ''United States Code,''; and*

*(B) in subsection (c), in the second sentence by striking ''court to'' and inserting ''court of''.*

*(20) Section 371(d) is amended by adding at the end a period.*

*(21) Paragraphs (1), (2), and (3) of section 376(a) are each amended by striking the semicolon and inserting a period.*

*(b) OTHER AMENDMENTS.—*

*(1) Section 4732(a) of the Intellectual Property and Communications Omnibus Reform Act of 1999 is amended—*

*(A) in paragraph (9)(A)(ii), by inserting ''in subsection (b),'' after ''(ii)''; and*

*(B) in paragraph (10)(A), by inserting after ''title 35, United States Code,'' the following: ''other than sections 1 through 6 (as amended by chapter 1 of this subtitle),''.*

*(2) Section 4802(1) of that Act is amended by inserting ''to'' before ''citizens''.*

*(3) Section 4804 of that Act is amended—*

*(A) in subsection (b), by striking ''11(a)'' and inserting ''10(a)''; and*

*(B) in subsection (c), by striking ''13'' and inserting ''12''.*

*(4) Section 4402(b)(1) of that Act is amended by striking ''in the fourth paragraph''.*

***SEC. 13207. TECHNICAL CORRECTIONS IN TRADEMARK LAW.***

*(a) AWARD OF DAMAGES.—Section 35(a) of the Act of July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1117(a)), is amended by striking ''a violation under section 43(a), (c), or (d),'' and inserting ''a violation under section 43(a) or (d),''.*

*(b) ADDITIONAL TECHNICAL AMENDMENTS.—The Trademark Act of 1946 is further amended as follows:*

*(1) Section 1(d)(1) (15 U.S.C. 1051(d)(1)) is amended in the first sentence by striking ''specifying the date of the applicant's first use'' and all that follows through the end of the sentence and inserting ''specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce.''.*

*(2) Section 1(e) (15 U.S.C. 1051(e)) is amended to read as follows:*

*''(e) If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.''.*

*(3) Section 8(f) (15 U.S.C. 1058(f)) is amended to read as follows:*

*''(f) If the registrant is not domiciled in the United States, the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.''.*

*(4) Section 9(c) (15 U.S.C. 1059(c)) is amended to read as follows:*

*''(c) If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.''.*

*(5) Subsections (a) and (b) of section 10 (15 U.S.C. 1060(a) and (b)) are amended to read as follows:*

*''(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.*

*''(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted.*

*''(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office, the record shall be prima facie evidence of execution.*

*''(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.*

*''(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Director.*

*''(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Director.''.*

*(6) Section 23(c) (15 U.S.C. 1091(c)) is amended by striking the second comma after ''numeral''.*

*(7) Section 33(b)(8) (15 U.S.C. 1115(b)(8)) is amended by aligning the text with paragraph (7).*

*(8) Section 34(d)(1)(A) (15 U.S.C. 1116(d)(1)(A)) is amended by striking ''section 110'' and all that follows through ''(36 U.S.C. 380)'' and inserting ''section 220506 of title 36, United States Code,''.*

*(9) Section 34(d)(1)(B)(ii) (15 U.S.C. 1116(d)(1)(B)(ii)) is amended by striking ''section 110'' and all that follows through ''(36 U.S.C. 380)'' and inserting ''section 220506 of title 36, United States Code''.*

*(10) Section 34(d)(11) is amended by striking ''6621 of the Internal Revenue Code of 1954'' and inserting ''6621(a)(2) of the Internal Revenue Code of 1986''.*

*(11) Section 35(b) (15 U.S.C. 1117(b)) is amended—*

*(A) by striking ''section 110'' and all that follows through ''(36 U.S.C. 380)'' and inserting ''section 220506 of title 36, United States Code,''; and*

*(B) by striking ''6621 of the Internal Revenue Code of 1954'' and inserting ''6621(a)(2) of the Internal Revenue Code of 1986''.*

*(12) Section 44(e) (15 U.S.C. 1126(e)) is amended by striking ''a certification'' and inserting ''a true copy, a photocopy, a certification,''.*

***SEC. 13208. PATENT AND TRADEMARK FEE CLERICAL AMENDMENT.***

*The Patent and Trademark Fee Fairness Act of 1999 (113 Stat. 1537–546 et seq.), as enacted by section 1000(a)(9) of Public Law 106–113, is amended in section 4203, by striking ''111(a)'' and inserting ''1113(a)''.*

***SEC. 13209. COPYRIGHT RELATED CORRECTIONS TO 1999 OMNIBUS REFORM ACT.***

*Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is amended as follows:*

*(1) Section 1007 is amended—*

*(A) in paragraph (2), by striking ''paragraph (2)'' and inserting ''paragraph (2)(A)''; and*

*(B) in paragraph (3), by striking ''1005(e)'' and inserting ''1005(d)''.*

*(2) Section 1006(b) is amended by striking ''119(b)(1)(B)(iii)'' and inserting ''119(b)(1)(B)(ii)''.*

*(3)(A) Section 1006(a) is amended—*

*(i) in paragraph (1), by adding ''and'' after the semicolon;*

*(ii) by striking paragraph (2); and*

*(iii) by redesignating paragraph (3) as paragraph (2).*

*(B) Section 1011(b)(2)(A) is amended to read as follows:*

*''(A) in paragraph (1), by striking 'primary transmission made by a superstation and embodying a performance or display of a work' and inserting 'performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed';''.*

***SEC. 13210. AMENDMENTS TO TITLE 17, UNITED STATES CODE.***

*Title 17, United States Code, is amended as follows:*

*(1) Section 119(a)(6) is amended by striking ''of performance'' and inserting ''of a performance''.*

*(2)(A) The section heading for section 122 is amended by striking ''**rights; secondary**'' and inserting ''**rights: Secondary**''.*

*(B) The item relating to section 122 in the table of contents for chapter 1 is amended to read as follows:*

*''122. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets.''.*

*(3)(A) The section heading for section 121 is amended by striking ''**reproduction**'' and inserting ''**Reproduction**''.*

*(B) The item relating to section 121 in the table of contents for chapter 1 is amended by striking ''reproduction'' and inserting ''Reproduction''.*

*(4)(A) Section 106 is amended by striking ''107 through 121'' and inserting ''107 through 122''.*

*(B) Section 501(a) is amended by striking ''106 through 121'' and inserting ''106 through 122''.*

*(C) Section 511(a) is amended by striking ''106 through 121'' and inserting ''106 through 122''.*

*(5) Section 101 is amended—*

*(A) by moving the definition of ''computer program'' so that it appears after the definition of ''compilation''; and*

*(B) by moving the definition of ''registration'' so that it appears after the definition of ''publicly''.*

*(6) Section 110(4)(B) is amended in the matter preceding clause (i) by striking ''conditions;'' and inserting ''conditions:''.*

*(7) Section 118(b)(1) is amended in the second sentence by striking ''to it''.*

*(8) Section 119(b)(1)(A) is amended—*

*(A) by striking ''transmitted'' and inserting ''retransmitted''; and*

*(B) by striking ''transmissions'' and inserting ''retransmissions''.*

*(9) Section 203(a)(2) is amended—*

*(A) in subparagraph (A)—*

*(i) by striking ''(A) the'' and inserting ''(A) The''; and*

*(ii) by striking the semicolon at the end and inserting a period;*

*(B) in subparagraph (B)—*

*(i) by striking ''(B) the'' and inserting ''(B) The''; and*

*(ii) by striking the semicolon at the end and inserting a period; and*

*(C) in subparagraph (C), by striking ''(C) the'' and inserting ''(C) The''.*

*(10) Section 304(c)(2) is amended—*

*(A) in subparagraph (A)—*

*(i) by striking ''(A) the'' and inserting ''(A) The''; and*

*(ii) by striking the semicolon at the end and inserting a period;*

*(B) in subparagraph (B)—*

*(i) by striking ''(B) the'' and inserting ''(B) The''; and*

*(ii) by striking the semicolon at the end and inserting a period; and*

*(C) in subparagraph (C), by striking ''(C) the'' and inserting ''(C) The''.*

*(11) The item relating to section 903 in the table of contents for chapter 9 is amended by striking ''licensure'' and inserting ''licensing''.*

***SEC. 13211. OTHER COPYRIGHT RELATED TECHNICAL AMENDMENTS.***

*(a) AMENDMENT TO TITLE 18.—Section 2319(e)(2) of title 18, United States Code, is amended by striking ''107 through 120'' and inserting ''107 through 122''.*

*(b) STANDARD REFERENCE DATA.—(1) Section 105(f) of Public Law 94–553 is amended by striking ''section 290(e) of title 15'' and inserting ''section 6 of the Standard Reference Data Act (15 U.S.C. 290e)''.*

*(2) Section 6(a) of the Standard Reference Data Act (15 U.S.C. 290e) is amended by striking ''Notwithstanding'' and all that follows through ''United States Code,'' and inserting ''Notwithstanding the limitations under section 105 of title 17, United States Code,''.*

***Subtitle C—Educational Use Copyright Exemption***

***SEC. 13301. EDUCATIONAL USE COPYRIGHT EXEMPTION.***

*(a) SHORT TITLE.—This subtitle may be cited as the ''Technology, Education, and Copyright Harmonization Act of 2002''.*

*(b) EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES.—Section 110 of title 17, United States Code, is amended—*

*(1) by striking paragraph (2) and inserting the following:*

*''(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—*

*''(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;*

*''(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;*

*''(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—*

*''(i) students officially enrolled in the course for which the transmission is made; or*

*''(ii) officers or employees of governmental bodies as a part of their official duties or employment; and*

*''(D) the transmitting body or institution—*

*''(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and*

*''(ii) in the case of digital transmissions—*

*''(I) applies technological measures that reasonably prevent—*

*''(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and*

*''(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and*

*''(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;''; and*

*(2) by adding at the end the following:*

*''In paragraph (2), the term 'mediated instructional activities' with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.*

*''For purposes of paragraph (2), accreditation—*

*''(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and*

*''(B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.*

*''For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.''.*

*(c) EPHEMERAL RECORDINGS.—*

*(1) IN GENERAL.—Section 112 of title 17, United States Code, is amended—*

*(A) by redesignating subsection (f) as subsection (g); and*

*(B) by inserting after subsection (e) the following:*

*''(f)(1) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted in paragraph (2), of a work that is in analog form, embodying the performance or display to be used for making transmissions authorized under section 110(2), if—*

*''(A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2); and*

*''(B) such copies or phonorecords are used solely for transmissions authorized under section 110(2).*

*''(2) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under section 110(2), if—*

*''(A) no digital version of the work is available to the institution; or*

*''(B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2).''.*

*(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 802(c) of title 17, United States Code, is amended in the third sentence by striking ''section 112(f)'' and inserting ''section 112(g)''.*

*(d) PATENT AND TRADEMARK OFFICE REPORT.—*

*(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act and after a period for public comment, the Undersecretary of Commerce for Intellectual Property, after consultation with the Register of Copyrights, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report describing technological protection systems that have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including upgradeable and self-repairing systems, and systems that have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad based consensus process. The report submitted to the Committees shall not include any recommendations, comparisons, or comparative assessments of any commercially available products that may be mentioned in the report.*

*(2) LIMITATIONS.—The report under this subsection—*

*(A) is intended solely to provide information to Congress; and*

*(B) shall not be construed to affect in any way, either directly or by implication, any provision of title 17, United States Code, including the requirements of clause (ii) of section 110(2)(D) of that title (as added by this subtitle), or the interpretation or application of such provisions, including evaluation of the compliance with that clause by any governmental body or nonprofit educational institution.*

***Subtitle D—Madrid Protocol Implementation***

***SEC. 13401. SHORT TITLE.***

*This subtitle may be cited as the ''Madrid Protocol Implementation Act''.*

**SEC. 13402. PROVISIONS TO IMPLEMENT THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS.**

*The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, as amended (15 U.S.C. 1051 and following) (commonly referred to as the ''Trademark Act of 1946'') is amended by adding after section 51 the following:*

*''TITLE XII—THE MADRID PROTOCOL*

**''SEC. 60. DEFINITIONS.**

*''In this title:*

*''(1) BASIC APPLICATION.—The term 'basic application' means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.*

*''(2) BASIC REGISTRATION.—The term 'basic registration' means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.*

*''(3) CONTRACTING PARTY.—The term 'Contracting Party' means any country or inter-governmental organization that is a party to the Madrid Protocol.*

*''(4) DATE OF RECORDAL.—The term 'date of recordal' means the date on which a request for extension of protection, filed after an international registration is granted, is recorded on the International Register.*

*''(5) DECLARATION OF BONA FIDE INTENTION TO USE THE MARK IN COMMERCE.—The term 'declaration of bona fide intention to use the mark in commerce' means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—*

*''(A) the applicant or holder has a bona fide intention to use the mark in commerce;*

*''(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce; and*

*''(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception.*

*''(6) EXTENSION OF PROTECTION.—The term 'extension of protection' means the protection resulting from an international registration that extends to the United States at the request of the holder of the international registration, in accordance with the Madrid Protocol.*

*''(7) HOLDER OF AN INTERNATIONAL REGISTRATION.—A 'holder' of an international registration is the natural or juristic person in whose name the international registration is recorded on the International Register.*

*''(8) INTERNATIONAL APPLICATION.—The term 'international application' means an application for international registration that is filed under the Madrid Protocol.*

*''(9) INTERNATIONAL BUREAU.—The term 'International Bureau' means the International Bureau of the World Intellectual Property Organization.*

*''(10) INTERNATIONAL REGISTER.—The term 'International Register' means the official collection of data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded.*

*''(11) INTERNATIONAL REGISTRATION.—The term 'international registration' means the registration of a mark granted under the Madrid Protocol.*

*''(12) INTERNATIONAL REGISTRATION DATE.—The term 'international registration date' means the date assigned to the international registration by the International Bureau.*

*''(13) MADRID PROTOCOL.—The term 'Madrid Protocol' means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.*

*''(14) NOTIFICATION OF REFUSAL.—The term 'notification of refusal' means the notice sent by the United States Patent and Trademark Office to the International Bureau declaring that an extension of protection cannot be granted.*

*''(15) OFFICE OF A CONTRACTING PARTY.—The term 'Office of a Contracting Party' means—*

*''(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks; or*

*''(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.*

*''(16) OFFICE OF ORIGIN.—The term 'office of origin' means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.*

*''(17) OPPOSITION PERIOD.—The term 'opposition period' means the time allowed for filing an opposition in the United States Patent and Trademark Office, including any extension of time granted under section 13.*

**''SEC. 61. INTERNATIONAL APPLICATIONS BASED ON UNITED STATES APPLICATIONS OR REGISTRATIONS.**

*''(a) IN GENERAL.—The owner of a basic application pending before the United States Patent and Trademark Office, or the owner of a basic registration granted by the United States Patent and Trademark Office may file an international application by submitting to the United States Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Director.*

*''(b) QUALIFIED OWNERS.—A qualified owner, under subsection (a), shall—*

*''(1) be a national of the United States;*

*''(2) be domiciled in the United States; or*

*''(3) have a real and effective industrial or commercial establishment in the United States.*

**''SEC. 62. CERTIFICATION OF THE INTERNATIONAL APPLICATION.**

*''(a) CERTIFICATION PROCEDURE.—Upon the filing of an application for international registration and payment of the prescribed fees, the Director shall examine the international application for the purpose of certifying that the information contained in the international application corresponds to the information contained in the basic application or basic registration at the time of the certification.*

*''(b) TRANSMITTAL.—Upon examination and certification of the international application, the Director shall transmit the international application to the International Bureau.*

**''SEC. 63. RESTRICTION, ABANDONMENT, CANCELLATION, OR EXPIRATION OF A BASIC APPLICATION OR BASIC REGISTRATION.**

*''With respect to an international application transmitted to the International Bureau under section 62, the Director shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—*

*''(1) within 5 years after the international registration date; or*

*''(2) more than 5 years after the international registration date if the restriction, abandonment, or cancellation of the basic application or basic registration resulted from an action that began before the end of that 5-year period.*

**''SEC. 64. REQUEST FOR EXTENSION OF PROTECTION SUBSEQUENT TO INTERNATIONAL REGISTRATION.**

*''The holder of an international registration that is based upon a basic application filed with the United States Patent and Trademark Office or a basic registration granted by the Patent and Trademark Office may request an extension of protection of its international registration by filing such a request—*

*''(1) directly with the International Bureau; or*

*''(2) with the United States Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Director.*

**''SEC. 65. EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES UNDER THE MADRID PROTOCOL.**

*''(a) IN GENERAL.—Subject to the provisions of section 68, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.*

*''(b) IF THE UNITED STATES IS OFFICE OF ORIGIN.—Where the United States Patent and Trademark Office is the office of origin for a trademark application or registration, any international registration based on such application or registration cannot be used to obtain the benefits of the Madrid Protocol in the United States.*

**''SEC. 66. EFFECT OF FILING A REQUEST FOR EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES.**

*''(a) REQUIREMENT FOR REQUEST FOR EXTENSION OF PROTECTION.—A request for extension of protection of an international registration to the United States that the International Bureau transmits to the United States Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.*

*''(b) EFFECT OF PROPER FILING.—Unless extension of protection is refused under section 68, the proper filing of the request for extension of protection under subsection (a) shall constitute constructive use of the mark, conferring the same rights as those specified in section 7(c), as of the earliest of the following:*

*''(1) The international registration date, if the request for extension of protection was filed in the international application.*

*''(2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.*

*''(3) The date of priority claimed pursuant to section 67.*

**''SEC. 67. RIGHT OF PRIORITY FOR REQUEST FOR EXTENSION OF PROTECTION TO THE UNITED STATES.**

*''The holder of an international registration with a request for an extension of protection to the United States shall be entitled to claim a date of priority based on a right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—*

*''(1) the request for extension of protection contains a claim of priority; and*

*''(2) the date of international registration or the date of the recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article*

*4(C)(4) of the Paris Convention for the Protection of Industrial Property).*

**"SEC. 68. EXAMINATION OF AND OPPOSITION TO REQUEST FOR EXTENSION OF PROTECTION; NOTIFICATION OF REFUSAL.**

*''(a) EXAMINATION AND OPPOSITION.—(1) A request for extension of protection described in section 66(a) shall be examined as an application for registration on the Principal Register under this Act, and if on such examination it appears that the applicant is entitled to extension of protection under this title, the Director shall cause the mark to be published in the Official Gazette of the United States Patent and Trademark Office.*

*''(2) Subject to the provisions of subsection (c), a request for extension of protection under this title shall be subject to opposition under section 13.*

*''(3) Extension of protection shall not be refused on the ground that the mark has not been used in commerce.*

*''(4) Extension of protection shall be refused to any mark not registrable on the Principal Register.*

*''(b) NOTIFICATION OF REFUSAL.—If, a request for extension of protection is refused under subsection (a), the Director shall declare in a notification of refusal (as provided in subsection (c)) that the extension of protection cannot be granted, together with a statement of all grounds on which the refusal was based.*

*''(c) NOTICE TO INTERNATIONAL BUREAU.—(1) Within 18 months after the date on which the International Bureau transmits to the Patent and Trademark Office a notification of a request for extension of protection, the Director shall transmit to the International Bureau any of the following that applies to such request:*

*''(A) A notification of refusal based on an examination of the request for extension of protection.*

*''(B) A notification of refusal based on the filing of an opposition to the request.*

*''(C) A notification of the possibility that an opposition to the request may be filed after the end of that 18-month period.*

*''(2) If the Director has sent a notification of the possibility of opposition under paragraph (1)(C), the Director shall, if applicable, transmit to the International Bureau a notification of refusal on the basis of the opposition, together with a statement of all the grounds for the opposition, within 7 months after the beginning of the opposition period or within 1 month after the end of the opposition period, whichever is earlier.*

*''(3) If a notification of refusal of a request for extension of protection is transmitted under paragraph (1) or (2), no grounds for refusal of such request other than those set forth in such notification may be transmitted to the International Bureau by the Director after the expiration of the time periods set forth in paragraph (1) or (2), as the case may be.*

*''(4) If a notification specified in paragraph (1) or (2) is not sent to the International Bureau within the time period set forth in such paragraph, with respect to a request for extension of protection, the request for extension of protection shall not be refused and the Director shall issue a certificate of extension of protection pursuant to the request.*

*''(d) DESIGNATION OF AGENT FOR SERVICE OF PROCESS.—In responding to a notification of refusal with respect to a mark, the holder of the international registration of the mark may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person residing in the United States on whom notices or process in proceedings affecting the mark may be served. Such notices or process may be served upon the person designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation filed. If the person designated cannot be found at the address given in the last designation, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person residing in the United States for service of notices or process in proceedings affecting the mark, the notice or process may be served on the Director.*

**"SEC. 69. EFFECT OF EXTENSION OF PROTECTION.**

*''(a) ISSUANCE OF EXTENSION OF PROTECTION.—Unless a request for extension of protection is refused under section 68, the Director shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the United States Patent and Trademark Office.*

*''(b) EFFECT OF EXTENSION OF PROTECTION.—From the date on which a certificate of extension of protection is issued under subsection (a)—*

*''(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register; and*

*''(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.*

**"SEC. 70. DEPENDENCE OF EXTENSION OF PROTECTION TO THE UNITED STATES ON THE UNDERLYING INTERNATIONAL REGISTRATION.**

*''(a) EFFECT OF CANCELLATION OF INTERNATIONAL REGISTRATION.—If the International Bureau notifies the United States Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Director shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.*

*''(b) EFFECT OF FAILURE TO RENEW INTERNATIONAL REGISTRATION.—If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.*

*''(c) TRANSFORMATION OF AN EXTENSION OF PROTECTION INTO A UNITED STATES APPLICATION.—The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under article 6(4) of the Madrid Protocol, may file an application, under section 1 or 44 of this Act, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 67 of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this Act which apply to any application filed pursuant to section 1 or 44.*

**"SEC. 71. AFFIDAVITS AND FEES.**

*''(a) REQUIRED AFFIDAVITS AND FEES.—An extension of protection for which a certificate of extension of protection has been issued under section 69 shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director—*

*''(1) at the end of the 6-year period beginning on the date on which the certificate of extension of protection was issued by the Director, unless within the 1-year period preceding the expiration of that 6-year period the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Director; and*

*''(2) at the end of the 10-year period beginning on the date on which the certificate of extension of protection was issued by the Director, and at the end of each 10-year period thereafter, unless—*

*''(A) within the 6-month period preceding the expiration of such 10-year period the holder of the international registration files in the United States Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Director; or*

*''(B) within 3 months after the expiration of such 10-year period, the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with the fee described in subparagraph (A) and the surcharge prescribed by the Director.*

*''(b) CONTENTS OF AFFIDAVIT.—The affidavit referred to in subsection (a) shall set forth those goods or services recited in the extension of protection on or in connection with which the mark is in use in commerce and the holder of the international registration shall attach to the affidavit a specimen or facsimile showing the current use of the mark in commerce, or shall set forth that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.*

*''(c) NOTIFICATION.—The Director shall notify the holder of the international registration who files 1 of the affidavits of the Director's acceptance or refusal thereof and, in case of a refusal, the reasons therefor.*

*''(d) SERVICE OF NOTICE OR PROCESS.—The holder of the international registration of the mark may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person residing in the United States on whom notices or process in proceedings affecting the mark may be served. Such notices or process may be served upon the person so designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation so filed. If the person designated cannot be found at the address given in the last designation, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person residing in the United States for service of notices or process in proceedings affecting the mark, the notice or process may be served on the Director.*

**"SEC. 72. ASSIGNMENT OF AN EXTENSION OF PROTECTION.**

*''An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.*

**"SEC. 73. INCONTESTABILITY.**

*''The period of continuous use prescribed under section 15 for a mark covered by an extension of protection issued under this title may begin no earlier than the date on which the Director issues the certificate of the extension of protection under section 69, except as provided in section 74.*

**"SEC. 74. RIGHTS OF EXTENSION OF PROTECTION.**

*''When a United States registration and a subsequently issued certificate of extension of protection to the United States are owned by the*

*same person, identify the same mark, and list the same goods or services, the extension of protection shall have the same rights that accrued to the registration prior to issuance of the certificate of extension of protection.''.*

***SEC. 13403. EFFECTIVE DATE.***

*This subtitle and the amendments made by this subtitle shall take effect on the later of—*

*(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946) enters into force with respect to the United States; or*

*(2) the date occurring 1 year after the date of enactment of this Act.*

***TITLE IV—ANTITRUST TECHNICAL CORRECTIONS ACT OF 2002***

***SEC. 14101. SHORT TITLE.***

*This title may be cited as the ''Antitrust Technical Corrections Act of 2002''.*

***SEC. 14102. AMENDMENTS.***

*(a) PANAMA CANAL ACT.—Section 11 of the Panama Canal Act (37 Stat. 566; 15 U.S.C. 31) is amended by striking the undesignated paragraph that begins ''No vessel permitted''.*

*(b) SHERMAN ACT.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—*

*(1) by inserting ''(a)'' after ''SEC. 3.''; and*

*(2) by adding at the end the following:*

*''(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.''.*

*(c) WILSON TARIFF ACT.—*

*(1) TECHNICAL AMENDMENT.—The Wilson Tariff Act (28 Stat. 509; 15 U.S.C. 8 et seq.) is amended—*

*(A) by striking section 77; and*

*(B) in section 78—*

*(i) by striking ''76, and 77'' and inserting ''and 76''; and*

*(ii) by redesignating such section as section 77.*

*(2) CONFORMING AMENDMENTS TO OTHER LAWS.—*

*(A) CLAYTON ACT.—Subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)) is amended by striking ''seventy-seven'' and inserting ''seventy-six''.*

*(B) FEDERAL TRADE COMMISSION ACT.—Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by striking ''77'' and inserting ''76''.*

*(C) PACKERS AND STOCKYARDS ACT, 1921.—Section 405(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 225(a)) is amended by striking ''77'' and inserting ''76''.*

*(D) ATOMIC ENERGY ACT OF 1954.—Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by striking ''seventy-seven'' and inserting ''seventy-six''.*

*(E) DEEP SEABED HARD MINERAL RESOURCES ACT.—Section 103(d)(7) of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1413(d)(7)) is amended by striking ''77'' and inserting ''76''.*

*(d) CLAYTON ACT.—The first section 27 of the Clayton Act (15 U.S.C. 27) is redesignated as section 28 and is transferred so as to appear at the end of such Act.*

*(e) YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT.—Section 5(a)(2) of the Year 2000 Information and Readiness Disclosure Act (Public Law 105–271) is amended by inserting a period after ''failure''.*

*(f) ACT OF MARCH 3, 1913.—The Act of March 3, 1913 (chapter 114, 37 Stat. 731; 15 U.S.C. 30) is repealed.*

*(g) REPEAL.—Section 116 of the Act of November 19, 2001 is repealed.*

***SEC. 14103. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.***

*(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of enactment of this Act.*

*(b) APPLICATION TO CASES.—(1) Section 14102(f) shall apply to cases pending on or after the date of the enactment of this Act.*

*(2) The amendments made by subsections (a), (b), and (c) of section 14102 shall apply only with respect to cases commenced on or after the date of enactment of this Act.*

And the Senate agree to the same.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY HYDE,
GEORGE W. GEKAS,
J. HOWARD COBLE,
LAMAR SMITH,
ELTON GALLEGLY,
JOHN CONYERS, Jr.,
BARNEY FRANK,
BOBBY SCOTT,
TAMMY BALDWIN,
*(Provided,* That Mr. BERMAN is appointed in lieu of Ms. BALDWIN for consideration of sec. 312 of the Senate amendment, and modifications committed to conference.)
HOWARD BERMAN

From the Committee on Energy and Commerce, for consideration of secs. 2203–6, 2206, 2210, 2801, 2901–2911, 2951, 4005, and title VIII of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on Education and the Workforce, for consideration of secs. 2207, 2301, 2302, 2311, 2321–4, and 2331–4 of the Senate amendment, and modifications committed to conference:

PETER HOEKSTRA,
MICHAEL N. CASTLE,
GEORGE MILLER,
*Managers on the Part of the House.*

PATRICK LEAHY,
TED KENNEDY,
ORRIN HATCH,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 2215, the 21st Century Department of Justice Appropriations Authorization Act, to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck the entire House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

*Section 1. Short title and table of contents*

Section 1 provides that the short title of the Act shall be the 21st Century Department of Justice Appropriations Authorization Act, as well as the Table of Contents.

DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2002

*Section 101. Specific sums authorized to be appropriated for fiscal year 2002*

Section 101 authorizes appropriations to carry out the work of the various components of the Department of Justice for fiscal year 2002. The structure of section 101 mirrors the organization of the annual Commerce-Justice-State (CJS) appropriations bill and the President's budget request. The section authorizes the appropriations of amounts requested by the President in most accounts and as enacted in Public Law 107–77. This provision is similar to section 101 of the House bill. The accounts, and the activities and components that each would fund, are as follows:

*General Administration*—$92,668,000.—For the leadership offices of the Department (including the offices of the Attorney General and Deputy Attorney General) and the Justice Management Division, Executive Support Program, Intelligence Policy, Office of Professional Responsibility, and General Administration.

*Administrative Review and Appeals*—$173,647,000.—For the Executive Office for Immigration Review and the Office of the Pardon Attorney.

*Office of Inspector General*—$50,735,000.—For the investigation of allegations of violations of criminal and civil statutes, regulations, and ethical standards by Department employees, and for the new position of Deputy Inspector General to oversee the Federal Bureau of Investigation. This amount is $10 million above the President's request. The IG's Office has been severely downsized over the last several years from approximately 460 to 360 full-time equivalents. Oversight is a priority and this level of funding should get the IG back on the path of meeting the audit and oversight needs of the Department. The Committee expects that the OIG will substantially increase its oversight of the FBI, INS, and the Department's grant programs.

*General Legal Activities*—$549,176,000.—For the conduct of the legal activities of the Department. This includes the Office of Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Civil Rights Division, Office of Legal Counsel, Interpol, Legal Activities Office Automation, and Office of Dispute Resolution. The authorization includes not less than $4,000,000 to augment the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals.

*Antitrust Division*—$140,973,000.—For decreasing anticompetitive behavior among U.S. businesses and increasing the competitiveness of the national and international business environment.

*United States Attorneys*—$1,353,968,000.—For the 94 U.S. Attorneys and their offices and the Executive Office of U.S. Attorneys. The U.S. Attorneys represent the United States in the vast majority of criminal and civil cases handled by the Justice Department. The authorization includes not less than

$10,000,000 to augment the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147).

*Federal Bureau of Investigation*—$3,524,864,000.—For the detection, investigation, and prosecution of crimes against the United States. The FBI is also authorized by Executive Order to protect against foreign intelligence and international terrorist activities and, in certain circumstances, to collect foreign intelligence.

*United States Marshals Service*—$648,696,000.—To protect the Federal courts and its personnel and to ensure the effective operation of the Federal judicial system, of which no more than $15,000,000 may be used for construction.

*Federal Prison System*—$4,622,152,000.—For the administration, operation, and maintenance of Federal penal and correctional institutions.

*Federal Prison Detention*—$706,182,000.—For the support of U.S. prisoners in non-Federal institutions, as authorized by 18 U.S.C. 4013(a).

*Drug Enforcement Agency*—$1,481,783,000.—To enforce the controlled substance laws and regulations of the United States and to recommend and support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets.

*Immigration and Naturalization Service*—$3,499,854,000.—For the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, of which no more than $2,739,695,000 for salaries and expenses and border affairs, no more than $631,745,000 for salaries and expenses of citizenship and benefits, and no more than $128,454,000 for construction.

*Fees and Expenses of Witnesses*—$156,145,000.—For fees and expenses associated with providing witness testimony on behalf of the United States, expert witnesses, and private counsel for Government employees who have been sued, charged, or subpoenaed for actions taken while performing their official duties.

*Interagency Crime and Drug Enforcement*—$338,577,000.—For the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking.

*Foreign Claims Settlement Commission*—$1,136,000.—To adjudicate claims of U.S. nationals against foreign governments under jurisdiction conferred by the International Claims Settlement Act of 1949, as amended, and other authorizing legislation.

*Community Relations Service (CRS)*—$9,269,000.—To assist communities in preventing violence and resolving conflicts arising from racial and ethnic tensions and to develop the capacity of such communities to address these conflicts without external assistance. CRS activities are conducted in accordance with title X of the Civil Rights Act of 1964.

*Assets Forfeiture Fund*—$22,949,000.—To provide a stable source of resources to cover the costs of the asset seizure and forfeiture program, including the costs of seizing, evaluating, inventorying, maintaining, protecting, advertising, forfeiting, and disposing of property.

*United States Parole Commission*—$9,876,000.—For the activities of the U.S. Parole Commission. The Commission has jurisdiction over all Federal prisoners eligible for parole, wherever confined, and continuing jurisdiction over those who are released on parole or as if on parole.

*Federal Detention Trustee*—$1,000,000.—For necessary expenses to exercise all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the U.S. Marshals Service; and the detention of aliens in the custody of the Immigration and Naturalization Service.

*Joint Automated Booking System*—$1,000,000.—For expenses necessary for the nationwide deployment of a Joint Automated Booking System including automated capability to transmit fingerprint and image data.

*Narrowband Communications*—$94,615,000.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems.

*Radiation Exposure Compensation*.—such sums as necessary—For administrative expenses in accordance with the Radiation Exposure Compensation Act.

*Counterterrorism Fund*—$4,989,000.—For the reimbursement of costs authorized by section 101 of the USA PATRIOT Act (Public Law 107–56).

*Office of Justice Programs*—$132,862,000.—For necessary administrative expenses of the Office of Justice Programs.

Section 102. Specific sums authorized to be appropriated for fiscal year 2003

Section 102 authorizes appropriations to carry out the work of the various components of the Department of Justice for fiscal year 2003. The conferees added this section to the conference report to reflect the President's budget request for fiscal year 2003, which was released after passage of the House and Senate bills. There are authorized to be appropriated for fiscal year 2003, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:

*General Administration*.—$121,079,000.—For the leadership offices of the Department (including the offices of the Attorney General and Deputy Attorney General) and the Justice Management Division, Executive Support Program, Intelligence Policy, Office of Professional Responsibility, and General Administration.

*Administrative Review and Appeals*.—$198,869,000.—For the Executive Office for Immigration Review and the Office of the Pardon Attorney.

*Office of Inspector General*.—$66,288,000.—For the investigation of allegations of violations of criminal and civil statutes, regulations, and ethical standards by Department employees, and for the new position of Deputy Inspector General to oversee the Federal Bureau of Investigation.

*General Legal Activities*.—$659,181,000.—For the conduct of the legal activities of the Department. This includes the Office of Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Civil Rights Division, Office of Legal Counsel, Interpol, Legal Activities Office Automation, and Office of Dispute Resolution. The authorization includes not less than $4,000,000 to augment the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals.

*Antitrust Division*.—$141,855,000.—For decreasing anticompetitive behavior among U.S. businesses and increasing the competitiveness of the national and international business environment.

*United States Attorneys*.—$1,550,948,000.—For the 94 U.S. Attorneys and their offices and the Executive Office of U.S. Attorneys. The U.S. Attorneys represent the United States in the vast majority of criminal and civil cases handled by the Justice Department. The authorization includes not less than $10,000,000 to augment the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147).

*Federal Bureau of Investigation*.—$4,323,912,000.—For the detection, investigation, and prosecution of crimes against the United States. The FBI is also authorized by Executive Order to protect against foreign intelligence and international terrorist activities and, in certain circumstances, to collect foreign intelligence.

*United States Marshals Service*.—$737,346,000.—To protect the Federal courts and its personnel and to ensure the effective operation of the Federal judicial system, of which no more than $6,621,000 may be used for construction.

*Federal Prison System*.—$4,605,068,000.—For the administration, operation, and maintenance of Federal penal and correctional institutions.

*Drug Enforcement Administration*.—$1,582,044,000.—To enforce the controlled substance laws and regulations of the United States and to recommend and support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets.

*Immigration and Naturalization Service*.—$4,131,811,000. For the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, of which no more than $3,253,561,000 for salaries and expenses of Border Patrol; no more than $88,598,000 for salaries and expenses of immigration services, including international services; and no more than $789,652,000 for salaries and expenses for support and administration.

School Compliance with INS Regulations: Designated School Officials (DSO) Certification. The conferees strongly endorse a plan for the INS to implement after January 31, 2003, a comprehensive training program for DSOs. This program should educate DSOs on their professional responsibilities with regards to IIRIRA, the USA PATRIOT Act and SEVIS and should employ a testing mechanism to verify this understanding. In addition, the training system should include a mechanism for creating a ''professional register'' of DSOs who have completed the requisite training and are, therefore, eligible to perform this vital function. It is recommended that the program be outsourced to a private-sector company with the ability to implement such a program effectively, rapidly and at little or no cost to the Federal Government.

*Fees and Expenses of Witnesses*.—$156,145,000.—For fees and expenses associated with providing witness testimony on behalf of the United States, expert witnesses, and private counsel for Government employees who have been sued, charged, or subpoenaed for actions taken while performing their official duties.

*Interagency Crime and Drug Enforcement*.—$362,131,000.—For the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking.

*Foreign Claims Settlement Commission*.—$1,194,000.—To adjudicate claims of U.S. nationals against foreign governments under jurisdiction conferred by the International Claims Settlement Act of 1949, as amended, and other authorizing legislation.

*Community Relations Service*.—$10,732,000.—To assist communities in preventing violence and resolving conflicts arising from racial and ethnic tensions and to develop the capacity of such communities to address these conflicts without external assistance. CRS activities are conducted in accordance with title X of the Civil Rights Act of 1964. The increased authorization provided by this section is intended to support the addition of six full-time employees to accommodate the

expansion of the Community Relations Service's efforts to address heightened tension and potential for conflict in many communities in the wake of the September 11, 2001 attacks on the United States.

*Assets Forfeiture Fund.*—$22,949,000.—To provide a stable source of resources to cover the costs of the asset seizure and forfeiture program, including the costs of seizing, evaluating, inventorying, maintaining, protecting, advertising, forfeiting, and disposing of property.

*United States Parole Commission.*—$11,355,000.—For the activities of the U.S. Parole Commission. The Commission has jurisdiction over all Federal prisoners eligible for parole, wherever confined, and continuing jurisdiction over those who are released on parole or as if on parole.

*Federal Detention Trustee.*—$1,388,583,000.—For necessary expenses to exercise all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the U.S. Marshals Service; and the detention of aliens in the custody of the Immigration and Naturalization Service.

*Identification System Integration.*—$24,505,000.—For expenses necessary for the operation of the Identification System Integration.

*Narrowband Communications.*—$149,292,000.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems.

*Radiation Exposure Compensation.*—such sums as necessary.—For administrative expenses in accordance with the Radiation Exposure Compensation Act.

*Counterterrorism Fund.*—$35,000,000.—For the reimbursement of costs authorized by section 101 of the USA PATRIOT Act (Public Law 107–56).

*Office of Justice Programs.*—$215,811,000.—For administrative expenses not otherwise provided for, of the Office of Justice Programs.

*Legal Activities Office.*—$15,942,000.—For necessary expenses related to office automation.

*Section 103. Appointment of additional Assistant United States Attorneys; reduction of certain litigation positions*

This section authorizes the Attorney General to transfer 200 additional Assistant U.S. Attorneys from among the six litigating divisions at the Justice Department's headquarters (Main Justice) in Washington, DC., to the various U.S. Attorneys offices around the country. Vacant positions resulting from transfers pursuant to this section will be terminated. This section is intended to raise the productivity of Washington—based lawyers, who litigate criminal and civil cases across the nation for the Justice Department, by moving them to the field. Litigating attorneys for the Government are most effective in the Federal judicial district where their cases are pending. The appointment authorization is at the discretion of the Attorney General. This provision is identical to section 101 of the Senate bill and similar to section 102 of the House bill.

*Section 104. Authorization of Additional Assistant United States Attorneys for project safe neighborhoods*

This section authorizes an additional Assistant United States Attorney in each of the 94 U.S. Attorney Offices to implement part of the Administration's Project Safe Neighborhoods proposal to reduce school gun violence across the Nation. These prosecutors will assist in targeting juveniles who obtain weapons and commit violent crimes, as well as the adults who place firearms in the hands of juveniles. This provision is identical to section 102 of the Senate bill.

TITLE II—PERMANENT ENABLING PROVISIONS

*Section 201. Permanent authority*

Section 201 amends chapter 31 of title 28, United States Code, by creating a new section, ''530C''. This section details permitted uses of available funds by the Attorney General to carry out the activities of the Justice Department. General permitted uses of available funds include:

Payment for motor vehicles, boats, and aircraft;

Payment for service of experts and consultants, and payment for private counsel;

Payment for official reception and representation expenses and public tours;

Payment of unforeseen emergencies of a confidential character;

Payment of miscellaneous and emergency expenses;

Payment of certain travel and attendance expenses;

Payment of contracts for personal services abroad;

Payment of interpreters and translators;

Payment for uniforms;

Payment for primary and secondary schooling of dependents of personnel stationed overseas; and

Payment for rewards, including authority for terrorism-related rewards previously authorized by the USA PATRIOT Act (Public Law 107–56));

Specific permitted uses of available funds include:

Payment for aircraft and boats;

Payment for ammunition, firearms, and firearm competitions; and

Payment for construction of certain facilities.

The use of funds appropriated for Fees and Expenses of Witnesses is limited to certain expenses and the construction of witness safesites. The use of funds appropriated for the Federal Bureau of Investigation is limited to the detection, investigation, and prosecution of crimes against the United States. The use of funds appropriated for the Immigration and Naturalization Service is limited to general Immigration and Naturalization Service activities. The use of appropriated funds for the Federal Prison System is limited to general function of the Federal Prison System. The use of appropriated funds for the Detention Trustee is limited to the functions authorized by law relating to the detention of Federal prisoners in non—Federal institutions or otherwise in the custody of the U.S. Marshals Service and for the detention of aliens in the custody of the INS.

The Attorney General is prohibited from compensating employed attorneys who are not duly licensed and authorized to practice under the law of a State, U.S. territory, or the District of Columbia. And reimbursement payments to governmental units of the Department of Justice, other Federal entities, or State or local governments are limited to uses permitted by the authority permitting such reimbursement payment.

The section also permits the FBI and other components of the Department of Justice to enter into cooperative projects with foreign countries to improve law enforcement or intelligence operations and to authorize the Attorney General to charge and collect a fee for training of railroad police officers. In addition, the section authorizes the Attorney General to seek reimbursement of warranty work performed at Department of Justice facilities. The administration requested these provisions in its budget submissions for fiscal year 2002 and fiscal year 2003. This provision is similar to section 201 of the Senate and House bills.

*Section 202. Permanent authority relating to enforcement of laws*

Section 202 amends chapter 31 of title 28, United States Code, by creating a new section, ''530D'' relating to reporting on the enforcement of laws. This section directs the Attorney General to report to Congress in any case in which the Attorney General, the President, head of executive agency, or military department:

(1) Establishes a policy to refrain from enforcing any provision of a Federal statute, rule, regulation, program, policy, or other law within the responsibility of the Attorney General;

(2) Refrains from adhering to, enforcing, applying, or complying with any other judicial determination or other statute, rule, regulation, program, or policy within the responsibility of the Attorney General;

(3) Decides to contest in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law;

(4) Refrains from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of such provision when the constitutionality of the provision is challenged; or

(5) When the Attorney General approves the settlement or compromise of any claim, suit or other action against the United States for more than $2,000,000 (excluding prejudgment interest) or for certain injunctive relief against the Government that is likely to exceed three years.

Each report, which is subject to certain time and content requirements, must be submitted to the Majority and Minority Leaders of the Senate, the Speaker of the House, House Majority Leader, House Minority Leader, and the Chairman and ranking minority member of the Senate and House Committees on the Judiciary, the Senate Legal Counsel and the General Counsel of the House of Representatives. Section 202 also includes a number of conforming amendments.

This provision is similar to section 202 of the Senate and House bills.

*Section 203. Miscellaneous uses of funds; technical amendments*

Section 203 provides technical amendments to the Bureau of Justice Assistance grant programs in title I of the Omnibus Crime Control and Safe Streets Act of 1968. It also makes minor amendments to the amount available to compensate attorneys specially retained by the Attorney General. This provision is identical to section 203 of the Senate bill and similar to section 204 House bill.

*Section 204. Technical and miscellaneous amendments to Department of Justice authorities; authority to transfer property of marginal value; recordkeeping; protection of the Attorney General*

Section 204 makes technical amendments to section 524(c) of title 28, United States Code, clarifies the Attorney General's authority to transfer property of marginal value, and requires the use of standard criteria for the purpose of categorizing offenders, victims, actors, and those acted upon in any data, records, or other information acquired, collected, classified, preserved, or published by the Attorney General for any statistical, research, or other aggregate reporting purpose. It also requires the Attorney General to notify Congress in writing of any civil asset forfeiture award greater than

$500,000. This section further makes several clerical and technical amendments to title 28, United States Code. In addition, this section adds authority to ensure that no inference is created that the Government is liable for interest on certain retroactive payments made by the Department of Justice, and to improve financial systems and debt-collection activities. This provision is identical to section 204 of the Senate bill and similar to section 205 of the House bill.

*Section 205. Oversight; waste, fraud, and abuse within the Department of Justice*

Section 205 amends section 529 of title 28, United States Code, to require the Attorney General to submit an annual report to the House and Senate Committees on the Judiciary describing:

Every grant, cooperative agreement, or programmatic services contract that was made, entered into, awarded, or supplemented in the immediately preceding fiscal year by or on behalf of the Office of Justice Programs (other than one made to a governmental entity, pursuant to a statutory formula); and

A report on every grant, cooperative agreement, or programmatic services contract made, entered into, awarded, or supplemented by or on behalf of the Office of Justice Programs that was terminated or that otherwise ended in the immediately preceding fiscal year (other than one made to a governmental entity, pursuant to a statutory formula).

In addition, section 205 amends the Anti-Lobbying Act to expand its coverage to all legislative activity at the Federal and State level and establishes a new reporting requirement on the enforcement and prosecution of copyright infringements, along with a number of conforming amendments. This provision is similar to section 205 of the Senate bill and section 206 of the House bill.

*Section 206. Enforcement of Federal criminal laws by Attorney General*

Section 206 provides clarifying amendments to title 28, United States Code, relating to the enforcement of Federal criminal law. This provision is identical to section 206 of the Senate bill and section 207 of the House bill.

*Section 207. Strengthening law enforcement in United States territories, commonwealths, and possessions*

Section 207 allows the payment of a retention bonus and other extended assignment incentives to retain law enforcement personnel in U.S. territories, commonwealths and possessions. This new authority is needed to continue the fight against drug and crime problems in these areas. This provision is identical to section 208 of the Senate bill.

TITLE III—MISCELLANEOUS

*Section 301. Repealers*

Section 301 repeals open-ended authorizations of appropriations for the National Institute of Corrections and the U.S. Marshals Service and redundant authorizations for payment of rewards. This provision is similar to section 301 of the Senate and House bills.

*Section 302. Technical amendments to Title 18 of the United States Code*

Section 302 makes several minor clarifying amendments to title 18, United States Code. Section 302(3) moves a comma that became the focus of a statutory construction question in Crandon v. United States.[1] This provision is identical to section 302 of the Senate and House bills.

[1] 494 U.S. 152 (1990) (J. Scalia concurring).

*Section 303. Required submission of proposed authorization of appropriations for the Department of Justice for fiscal years 2004 and 2005*

Section 303 requires the President to submit a Department of Justice authorization bill for fiscal years 2004 and 2005 to the House and Senate Committees on the Judiciary when the President submits his fiscal year 2004 budget request. This authorization bill should contain any recommended additions, changes or modifications to existing authorities that may be necessary to carry out the functions of the Department. Any such addition, change, or modification should be accompanied by a description of the change and the justification for the change. This provision is similar to section 303 of the Senate and House bills.

*Section 304. Study of untested rape examination kits*

Section 304 requires the Attorney General to conduct a study and assessment of untested rape examination kits that currently exist nationwide, including information from all law enforcement jurisdictions. The Attorney General is required to submit a report of this study and assessment to the Congress. This provision is identical to section 304 of the Senate bill and section 305 of the House bill.

*Section 305. Reports on use of DCS 1000 (carnivore)*

Section 305 requires the Attorney General and Director of the Federal Bureau of Investigation to submit a timely report to the House and Senate Committees on the Judiciary detailing, among other things, as:

(1) The kind and number of orders or extensions applied for to authorize the use of the DCS 1000 program (or any subsequent version of such program);

(2) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(3) The offense specified in the order or application, or extension of an order;

(4) The number and nature of the facilities affected;

(5) The identity of the applying investigative or law enforcement agency making the application for an order; and

(6) The specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program).

This provision is identical to section 305 of the Senate bill and is similar to section 306 of the House bill.

*Section 306. Study of allocation of litigating attorneys*

Section 306 requires the Attorney General to report to Congress within 180 days of enactment of this bill on the allocation of funds, attorneys, and other personnel, per-attorney workloads for each office of U.S. Attorney and each division of the Department of Justice. This provision is identical to section 306 of the Senate bill.

*Section 307. Use of Truth-in-Sentencing and Violent Offender Incarceration Grants*

Section 307 provides States with flexibility to use existing Truth-In-Sentencing and Violent Offender Incarceration Grants to account for juveniles being housed in adult prison facilities. This provision is identical to section 307 of the Senate bill.

*Section 308. Authority of the Department of Justice Inspector General*

Section 308 would amend Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) to provide explicit statutory authority for the Office of the Inspector General (''OIG'') to investigate all allegations of criminal or administrative misconduct by DOJ employees, including FBI personnel. The OIG is also authorized to refer certain matters to the FBI Office of Professional Responsibility or to the internal affairs office of the appropriate component of the Department. The Attorney General is directed to promulgate regulations implementing this OIG authority. The section would make clear that the OIG may investigate alleged misconduct by DOJ component heads.

For many years, the FBI was excluded from OIG jurisdiction and the FBI's own internal Office of Professional Responsibility had sole authority to investigate FBI personnel misconduct, unless the Attorney General made an exception. The FBI's exclusive domain to investigate its own misconduct was unique in the Department and created the appearance of a conflict of interest. On July 11, 2001, Attorney General Ashcroft issued a new rule expanding the OIG's jurisdiction over the FBI. This section is consistent with, and codifies, the Attorney General's new rule.

This provision is similar to section 308 of the Senate bill.

*Section 309. Review of the Department of Justice*

To ensure that the OIG has the necessary structure and resources to effectively assume its new jurisdiction over the FBI and that the Congress is fully informed of such needs, this section requires the Inspector General to: (1) appoint an official to help supervise and coordinate oversight operations and programs of the FBI during the transition period; (2) conduct a comprehensive study of the FBI and report back to the House and Senate Judiciary Committees with a plan for auditing and evaluating various parts of the FBI (including information technology) and for effective continued OIG oversight; and (3) report back to the House and Senate Judiciary Committees on whether an Inspector General for the FBI should be established. The section would add a requirement to report on FBI administrative changes to implement the OIG authority, on different internal investigative methods used by DOJ components and steps to bring uniformity, and on whether recommended guidelines should be developed for the discipline of DOJ personnel for misconduct. This provision is similar to section 309 of the Senate bill and section 304 of the House bill.

*Section 310.—Authorization of appropriations*

The conferees agreed to add this section to authorize appropriations for the OIG and the FBI Office of Professional Responsibility for fiscal year 2003.

Subsection (a) would authorize $2,000,000 to be appropriated to the Department of Justice for fiscal year 2003 for three purposes: first, to increase the staffing level of the OIG by 25 full-time employees to conduct an increased number of audits, inspections, and investigations of alleged misconduct by FBI employees; second, to fund additional audit coverage of the grant programs administered by the Office of Justice Programs of the Department of Justice; and third, to conduct special reviews of FBI efforts to implement recommendations made by the OIG in reports on alleged misconduct by the Bureau.

Subsection (b) would authorize $1,700,000 to be appropriated to the FBI for fiscal year 2003 to increase the staffing level of the FBI Office of Professional Responsibility by 10 full-time special agents and 4 full-time support employees.

*Section 311. Report on threats and assaults against Federal law enforcement officers, United States judges, United States officials and their families*

Section 311 repeals a burdensome reporting requirement on the compilation of statistics relating to intimidation of Government employees and requires the Attorney General to

report to Congress not later than 45 days after the end of the fiscal year 2002 on the number of investigations and prosecutions on threats and assaults against Federal law enforcement officers, U.S. judges, U.S. officials and their families. This provision is similar to section 311 of the Senate bill and the repeal provision is identical to the repeal provision in section 301 of the House bill.

*Section 312. Additional Federal judgeships*

Section 312 authorizes eight new permanent judgeships as follows: five judgeships in the Southern District of California, two judgeships in the Western District of Texas, and one judgeship in the Western District of North Carolina. It would also convert four temporary judgeships to permanent judgeships—one each in the Central District of Illinois, the Southern District of Illinois, the Northern District of New York, and the Eastern District of Virginia. Additionally, section 312 creates seven new temporary judgeships, one each in the Northern District of Alabama, the District of Arizona, the Central District of California, the Southern District of Florida, the District of New Mexico, the Western District of North Carolina, and the Eastern District of Texas. Finally, it extends the temporary judgeship in the Northern District of Ohio for five years.

**TITLE IV—VIOLENCE AGAINST WOMEN**

*Section 401. Short title*

Section 401 establishes the ''Violence Against Women Office Act'' as the short title.

*Section 402. Establishment of Violence Against Women Office*

Section 402 specifies that Part T of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3796gg et seq.) will be amended by the following insertion, and changes the existing paragraph numbers to incorporate the amendment.

*Section 2002. Establishment of Violence Against Women Office*

Section 2002 creates a separate and independent Violence Against Women Office (hereinafter the ''Office'') in the Department of Justice, under the general authority of the Attorney General. The Office shall be headed by a Director who reports directly to the Attorney General and has final authority over all grants, cooperative agreements and contracts awarded by the Office.

Section 2002 also affirms that the Office has the sole jurisdiction over all the duties and functions delineated for the Director in Section 2004, and that the Office is solely responsible for coordination with other departments, agencies, or offices of all activities authorized or undertaken under the Violence Against Women Act of 1994 (Title VI of Public 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386). For instance, since its inception in 1995, the Violence Against Women Office has handled and coordinated the Department of Justice's legal and policy issues regarding violence against women—everything from enforcing protection orders across state lines to issuing annual reports on stalking. The jurisdiction provision ensures that coordination such as this will continue.

In addition, the Violence Against Women Office also works with other federal agencies, such as the Department of Housing and Urban Development, the Department of Health and Human Services, and the Immigration and Naturalization Service about federal policies, programs, statutes, and regulations that impact violence against women such as immigration procedures for battered immigrant women, public housing assistance for battered women and their children, and women's health programs. Pursuant to this jurisdiction section, inter-department coordination such as this will continue.

*Section 2003. Director of Violence Against Women Office*

Section 2003 establishes that the Office shall be headed by a Director appointed by the President and confirmed by the Senate. In addition, the Director is prohibited from other employment during service as Director. This provision specifies that compensation for the Director shall not exceed the rate payable for Level V of the Executive Schedule under §5316 of Title 5, United States Code.

*Section 2004. Duties and functions of director of Violence Against Women Office*

Section 2004 delineates the duties and functions of the director and correspondingly, the jurisdiction of the Office as set forth in §2002 and they are as follows:

(1) Maintaining liaison with the judicial branches of the Federal and State governments on matters relating to violence against women;

(2) Providing information to the President, the Congress, the judiciary, State, local and tribal governments, the general public on matters relating to violence against women;

(3) Serving, at the request of the Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women;

(4) Serving, at the request of the President, acting through the Attorney General, as the representative of the United States Government on human rights and economic justice matters related to violence against women in international fora, including, but not limited to, the United Nations;

(5) Carrying out the functions of the Department of Justice under the Violence Against Women Act of 1994 (Title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386) including with respect to those functions—

(A) the development of policy, protocols, and guidelines;

(B) the development and management of grant programs and other programs, and the provision of technical assistance under such programs;

(C) the award and termination of grants, cooperative agreements, and contracts.

(6) Providing technical assistance, coordination, and support to—

(A) other components of the Department of Justice, in efforts to develop policy and to enforce Federal laws relating to violence against women, including the litigation of civil and criminal actions relating to enforcing such laws;

(B) other Federal, State, local and tribal government agencies, in efforts to develop policy, provide technical assistance and improve coordination among agencies carrying out efforts to eliminate violence against women, including Indian or indigenous women; and (C) grantees, in efforts to combat violence against women and to provide support and assistance to victims of such violence.

(7) Exercising such other powers and functions as may be vested in the Director pursuant to this part or by delegation of the Attorney General; and

(8) Establishing such rules, regulations, guidelines and procedures as are necessary to carry out any function of the Office.

Pursuant to §2004(3), the Director and the Office will continue to participate in task forces, commissions, committees, working groups such as the Violence Against Women Coordinating Council in the Department of Justice, Office of Justice Programs Indian Issues Working Group, and the Department of Defense Task Force on Domestic Violence.

*Section 2005. Staff of Violence Against Women Office*

Section 2005 requires the Attorney General to ensure that the Office receives adequate staff to support the Director in carrying out the responsibilities, duties and functions.

*Section 2006. Authorizations of appropriations*

Section 2006 authorizes the appropriations of such sums as may be necessary to carry out this title for each fiscal year until fiscal year 2005, the year through which the Violence Against Women Act is authorized.

*Section 403. Effective date*

Section 403 states that this Title shall take effect 90 days after the date of enactment of this amendment.

DIVISION B—MISCELLANEOUS DIVISION

TITLE I—BOYS AND GIRLS CLUB OF AMERICA

*Section 1101.—Boys and Girls Clubs of America*

Section 1101 authorizes DOJ grants to the Boys and Girls Clubs of America to help establish 1,200 additional Boys and Girls Clubs across the nation with the goal of having 4,000 Boys and Girls Clubs in operation by January 1, 2007. This provision is similar to section 1101 of the Senate bill.

TITLE II—DRUG ABUSE EDUCATION, PREVENTION, AND TREATMENT ACT OF 2001

*Section 2001. Short title*

Section 2001 provides that the short title of this Act shall be the Drug Abuse Education, Prevention, and Treatment Act of 2001. It is the same as section 2001 of the Senate bill.

Subtitle A—Drug-Free Prisons and Jails

*Section 2101. Use of residential substance abuse treatment grants to provide for services during and after incarceration*

Section 2101 authorizes the use of Residential Substance Abuse Treatment Grants for treatment and sanctions both during incarceration and after release, as requested in the Administration's fiscal year 2002 budget request. This provision is identical to section 310 of the Senate bill.

*Section 2102. Jail-based substance abuse treatment programs*

Section 2102 provides grants to States for jail-based substance abuse programs, and requires States to make at least 10 percent of funds received under this section available to local correctional facilities. It is similar to section 2102 of the Senate bill.

*Section 2103. Mandatory revocation of probation and supervised release for failing a drug test*

Section 2103 amends 18 U.S.C. sections 3565(b) and 3583(g) to provide for mandatory revocation of probation or supervised release if a defendant tests positive for illegal controlled substances more than three times over the span of one year. This provision is identical to section 2103 of the Senate bill.

Subtitle B—Treatment and Prevention

*Section 2201. Report on drug-testing technologies*

Section 2201 directs the National Institute of Justice to conduct a study of drug-testing technologies to identify and assess the efficacy, accuracy, and usefulness of such technologies. It is similar to section 2209 of the Senate bill.

*Section 2202. Drug and substance abuse treatment, prevention, education, and research study*

Section 2202 instructs the President, in consultation with the Attorney General, the Secretary of Health and Human Services, the Secretary of Education, and other appropriate Federal officers, to review all federal

drug treatment, prevention, education, and research programs and recommend to Congress ways in which those programs could be streamlined, consolidated, simplified, coordinated, and made more effective.

*Section 2203. Drug abuse and addiction research*

Section 2203 authorizes the expansion of current and ongoing interdisciplinary research and clinical trials with treatment centers of the National Drug Abuse Treatment Clinical Trials Network relating to drug abuse and addiction. It is similar to section 2208 of the Senate-passed bill.

Subtitle C—Drug Courts

*Sec. 2301. Drug courts*

Section 2301 authorizes the Attorney General to make grants to States to fund adult drug courts, juvenile drug courts, family drug courts, and tribal drug courts. Drug court programs receiving funds may only involve nonviolent offenders and must involve continuing supervision over those offenders, coordination with appropriate State or local prosecutor, and the provision of services such as drug treatment. The Attorney General is also required to implement recommendations of the General Accounting Office to improve the accountability and track the success of drug court programs throughout the nation. This section is similar to section 2401 of the Senate bill.

*Sec. 2302. Authorization of appropriations*

Section 2302 authorizes appropriations of $50 million for fiscal year 2002, $54 million for fiscal year 2003, $58 million for fiscal year 2004, and $60 million for fiscal year 2005. This section is similar to section 2402 of the Senate bill.

*Sec. 2303. Study by the General Accounting Office*

Section 2303 instructs the GAO to study and assess the effectiveness and impact of grants made under this subtitle.

Subtitle D—Program for Successful Reentry of Criminal Offenders Into Local Communities

*Sec. 2411. Post incarceration vocational and remedial educational opportunities for inmates*

Section 2411 establishes a Federal Reentry Center Demonstration project, under which individualized plans will be developed to reduce recidivism by offenders to be released from the Federal prison population. Among other things, the project will include substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training. The project will also include a reasonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project. It is similar to section 2511 of the Senate bill.

*Sec. 2421. Amendments to the Omnibus Crime Control and Safe Streets Act of 1968*

Section 2421 authorizes the Attorney General to make grants of up to $1 million to States, Territories, and Indian tribes to establish demonstration projects to promote successful reentry of criminal offenders. Funds can be expended for oversight and monitoring of released offenders, substance abuse treatment, and other purposes. This provision is similar to section 2521 of the Senate bill.

Subtitle E—Other Matters

*Sec. 2501. Amendment to Controlled Substances Act*

Section 2501 makes a technical amendment to the Drug Abuse Treatment Act, which was signed into law last year, to amend the opt-out time limit from the date of passage of the Act to the date of Food and Drug Administration approval of the type of drugs authorized to be prescribed under the Act. This provision is identical to section 2951 of the Senate bill.

*Sec. 2502. Study of methamphetamine treatment*

Section 2502 amends section 3633 of the Methamphetamine Anti-Proliferation Act of 2000 to request that the National Institute on Drug Abuse produce a report that the Act directed the Institute of Medicine of the National Academy to produce. This provision is identical to section 2952 of the Senate bill.

*Sec. 2503. Authorization of funds for DEA police training in South and Central Asia*

Section 2503 authorizes not less than $5 million for fiscal year 2003 to the Attorney General for regional antidrug training by the Drug Enforcement Administration for law enforcement entities in South and Central Asia.

*Sec. 2504. United States-Thailand drug prosecutor exchange program*

Section 2504 authorizes the Attorney General to establish an exchange program in which prosecutors, judges, or policymakers from Thailand participate in an exchange program to observe federal prosecutors to learn about the various rules and procedures used in the United States to prosecute violations of federal criminal narcotics laws. The section authorizes $75,000 for fiscal years 2003 and 2004.

TITLE III—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

*Sec. 3001. Increasing the penalty for using physical force to tamper with witnesses, victims, or informants*

Section 3001 would increase the statutory maximum sentence for witness tampering that involves the use of physical force. Under current law, a defendant convicted of using physical force to tamper with a witness, victim or informant faces a maximum sentence of 10 years. This section would increase the maximum for the use or attempted use of force to 20 years, which is the same sentence available for a defendant who tampers with a witness by attempted murder. The increased penalty is justified because the use of physical force is often comparably egregious to attempted murder, such as where the victim, witness or informant is severely beaten, even though the government cannot prove the specific intent to commit murder. Judges should have the authority to sentence accordingly. This section would also add a provision for conspiracy cases making the maximum sentence for conspiracy the same as the maximum sentence for the underlying substantive offense. This provision is similar to section 4001 of the Senate bill.

*Sec. 3002. Correction of aberrant statutes to permit imposition of both a fine and imprisonment*

This section would allow the court to impose both a fine and imprisonment under certain aberrant statutes that presently permit the imposition of only one of these punishments, but not both. The statutes at issue are 18 U.S.C. §401 (criminal contempt); 18 U.S.C. §1705 (destruction of letter boxes); 18 U.S.C. §1916 (unauthorized employment or disposition of lapsed appropriations); 18 U.S.C. §2234 (willfully exceeding authority in executing a search warrant); 18 U.S.C. §2235 (maliciously procuring and executing a search warrant); and 28 U.S.C. §§636(e)(2) & (3) (criminal contempt by magistrates). Although the general policy of the Sentencing Reform Act of 1984 that courts should have multiple sentencing options, see 18 U.S.C. §3551(b) (''A sentence to pay a fine may be imposed in addition to any other sentence.''), these statutes stand as an anomalous exception to that policy, see *United States* v. *Versaglio*, 85 F.3d 943, 946–47 (2d Cir. 1996) (notwithstanding §3551(b), court many not impose both imprisonment and a fine under §401); *United States* v. *Holloway*, 991 F.2d 370, 373 (7th Cir. 1993) (same).

Of the statutes that limit the court to a single sentencing option, only section 401 has generated case law concerning the effect of its disjunctive sentencing provisions. These cases have resulted in windfalls for undeserving defendants when judges who are unaware of the unusual restriction on their sentencing authority mistakenly impose an illegal sentence of both a fine and imprisonment. If the defendant tenders payment of the fine before the error is corrected, the sentence is deemed to have been fully satisfied and the term of imprisonment must be vacated. See *In re Bradley*, 318 U.S. 50 (1943); *United States* v. *Catalano*, 1996 WL 387220 (2d Cir. July 11, 1996); Versaglio, 85 F.3d at 948; *United States* v. *Holmes*, 822 F.2d 481 (5th Cir. 1987); *United States* v. *Sampogne*, 533 F.2d 766, 767 (2d Cir. 1976). In effect, the defendant can buy immunity from imprisonment by immediately paying the fine and then filing an appeal challenging only the prison term. Even where it is clear that the sentencing court would have imposed a prison term rather than a fine if it had correctly understood its options, the defendant must be allowed to go free, with no possibility of the case being remanded for resentencing. While these decisions may be compelled by the plain wording of the statute, their outcomes are hardly satisfactory. As Chief Justice Stone remarked in his dissenting opinion in *Bradley*, it is unjust that ''the choice rests with the offender rather than with the court whether he shall be punished by fine or by imprisonment, either of which alone the court could have lawfully imposed; and that by payment of the fine, imposed and accepted under mistake of law . . . he may irrevocably escape punishment by imprisonment.'' 318 U.S. at 53; see also *Holmes*, 822 F.2d at 505 (Brown, J., dissenting) (''The Constitution does not require that sentencing should be a game in which the wrong move by a judge means immunity for the prisoner.'').

There is no sound reason to limit a court's sentencing authority under the statutes at issue to only a fine or imprisonment. No legislative history apparently exists to explain the reasons for these disjunctive sentencing provisions. Indeed, the Senate Judiciary Committee has previously remarked that this feature of section 401 was probably unintended and proposed correcting it in the Criminal Code Reform Act of 1979. See S. Rep. No. 96–553 at 355 (96th Cong. 2d Sess.). The correction is long overdue. The proposed amendment would therefore insert the phrase ''or both'' after the language authorizing a fine or imprisonment in the affected statutes. This section is identical to section 4002 of the Senate-passed bill.

*Sec. 3003. Reinstatement of counts dismissed pursuant to a plea agreement*

This section would create a new provision, to be codified at 18 U.S.C. §3296, which would extend the statute of limitations for counts dismissed pursuant to a plea agreement when the defendant's guilty plea is subsequently vacated. There have been cases where a defendant is indicted on one set of charges and pleads guilty to lesser counts pursuant to a plea bargain, but then later succeeds in getting the guilty plea vacated. If the plea is vacated after the statute of limitations on the original set of charges has run, courts have held that those charges cannot be reinstated and that the case is time-barred. Thus, the defendant can no longer be prosecuted even though the government acted with all reasonable diligence in bringing the case. See *United States* v. *Midgley*, 142

F.3d 174, 178–80 (3d Cir. 1998); *United States* v. *Podde*, 105 F.3d 813 (2d Cir. 1995). The bill would close this loophole by giving the government 60 days after the order vacating the defendant's plea becomes final to move to reinstate any charges dismissed pursuant to a plea agreement. This approach is analogous to that of 18 U.S.C. §3288, which grants the government a grace period to obtain a new indictment when counts are dismissed after the expiration of the statute of limitations.

The new section 3296 would not prevent the court from considering any defense other than statute of limitations to the reinstated charges. Thus, for example, defendants who contend that their ability to defend against the reinstated counts has been irreparably prejudiced by the passage of time retain their ability to bring a constitutional speedy trial claim, see *Barker* v. *Wingo*, 407 U.S. 514 (1972), as well as any other defenses to the prosecution they would otherwise have. This provision is identical to section 4003 of the Senate bill.

*Sec. 3004. Appeals from certain dismissals*

This section clarifies that 18 U.S.C. §3731 authorizes an appeal by the United States, consistent with the Double Jeopardy clause, whenever a district court enters an order dismissing or striking part of an indictment or information. Section 3731 confers broad authority on the United States to appeal orders of district courts that dismiss an indictment or information either in whole or as to ''any one or more counts.'' The statute was designed to permit the United States to appeal virtually all adverse rulings in criminal cases, when not precluded from doing so by the Double Jeopardy Clause of the Constitution, and contains a final sentence stating that the ''provisions of this section shall be liberally construed to effectuate its purposes.'' As a result of this language, the statute has generally been generously interpreted to allow government appeals, even when its literal language does not clearly extend to the case, such as where a district court has dismissed only a portion of a count such as a predicate act in a RICO count or an overt act in a conspiracy count. See, e.g., *United States* v. *Levasseur*, 846 F.2d 786 (1st Cir. 1988) (appeal held to lie where predicate acts were stricken from a RICO count). This approach is consistent with the Supreme Court's observation that section 3731 permits ''an appeal from an order dismissing only a portion of a count.'' *Sanabria* v. *United States*, 437 U.S. 54, 69 n.23 (1978). However, one federal circuit has held that section 3731 does not permit any government appeals from the dismissal of only part of a count. See *United States* v. *Louisiana Pacific Corporation*, 106 F.3d 345 (10th Cir. 1997). In other cases, appellate review of orders dismissing predicate acts or overt acts has been denied where the dismissed acts could not themselves have been charged in separate counts. See *United States* v. *Terry*, 5 F.3d 874 (5th Cir. 1993); *United States* v. *Tom*, 787 F.2d 65 (2d Cir. 1986).

It is time to resolve these conflicting results definitively. The reach of section 3731 should clearly be extended to orders dismissing portions of counts. Although the Solicitor General, who must approve all appeals by the United States to a court of appeals, only seldom authorizes appeals from partial dismissals of counts in criminal cases, there is no reason not to permit the government to appeal when the issue involved is important and determined by the Solicitor General to be worthy of presentation to a higher court. Indeed, there are some cases where the dismissal of a predicate act or overt act may substantially weaken the government's ability to prove its case. The proposed amendment would therefore insert the phrase ''or any part thereof'' in section 3731 so as to make clear that dismissals of any part of a count are subject to appeal by the United States in appropriate circumstances. This provision is identical to section 4004 of the Senate bill.

*Sec. 3005. Clarification of length of supervised release terms in controlled substance cases*

This section resolves a conflict in the circuits as to the permissible length of supervised release terms in controlled substance cases. Under 18 U.S.C. 3583(b), ''[e]xcept as otherwise provided,'' the maximum authorized terms of supervised release are 5 years for Class A and B felonies, 3 years for Class C and D felonies, and 1 year for Class E felonies and certain misdemeanors. The drug trafficking offenses in 21 U.S.C. §§841 and 960 prescribe special supervised release terms, however, that are longer than those applicable generally under section 3583(b). Those longer terms, which may include lifetime supervised release, were enacted in 1986 in the same Act that inserted the introductory phrase ''Except as otherwise provided'' in section 3583(b). Because of this clear legislative history and intent, three courts of appeals have held that section 3583(b) does not limit the length of supervised release that may be imposed for a violation of 21 U.S.C. §§841 or 960 when a greater term is there provided. *United States* v. *LeMay*, 952 F.2d 995, 998 (8th Cir. 1991); *United States* v. *Eng*, 14 F.3d 165, 172–3 (2d Cir. 1994); *United States* v. *Garcia*, 112 F.3d 395 (9th Cir. 1997). Two courts of appeals, however, have reached the opposite result, holding that the length of a supervised release term that can be imposed for controlled substance cases is limited by 18 U.S.C. §3583(b). *United States* v. *Gracia*, 983 F.2d 625, 630 (5th Cir. 1993); *United States* v. *Kelly*, 974 F.2d 22, 24–25 (5th Cir. 1992); *United States* v. *Good*, 25 F.3d 218 (4th Cir. 1994).

Although the issue has not arisen with frequency, the conflict is entrenched and should be dealt with definitively. Accordingly, the amendment would add the words ''Notwithstanding section 3583 of title 18'' to the title 21 controlled substance offenses in the parts of those statutes dealing with supervised release to make clear that the longer terms there prescribed control over the general provision in section 3583. Of course, the Sentencing Guidelines would continue to govern the permissible length of supervised release terms under the amended statutes. This provision is identical to section 4005 of the Senate bill.

*Sec. 3006. Authority of court to impose a sentence of probation or supervised release when reducing a sentence of imprisonment in certain cases*

This section would confer express authority on courts under section 3582(c)(1)(A), when exercising the power to reduce a term of imprisonment for extraordinary and compelling reasons, to impose a sentence of probation or supervised release with or without conditions. Such added flexibility is consistent with the purposes for which this statute was designed and will likely facilitate its use in appropriate cases.

Under 18 U.S.C. 3582(c)(l)(A), a court is authorized, on motion of the Bureau of Prisons and consistent with the purposes of sentencing in 18 U.S.C. 3553, to ''reduce the term of imprisonment'' upon a finding that ''extraordinary and compelling reasons'' warrant such a reduction. This limited authority has been generally utilized when a defendant sentenced to imprisonment becomes terminally ill or develops a permanently incapacitating illness not present at the time of sentencing. In such circumstances, the situation of a prisoner (e.g., one suffering from a contagious debilitating disease), may make a court reluctant simply to release the prisoner back into society unless another sentencing option such as home confinement as a condition of supervised release or probation can be imposed. Presently, however, it is doubtful whether a court can order such a sentence since section 3582(c)(1)(A) speaks only in terms of reducing ''the term of imprisonment,'' not imposing in its stead a lesser type of sentence. Cf. Fed. R. Crim. P. 35(b), which gives a court the power to ''reduce a sentence'' to reflect substantial assistance. The proposed language also makes it clear that any new term of supervised release or probation cannot be longer than the unserved portion of the original prison term, as it is not intended that this provision be used to increase the total amount of time that a person's liberty is restricted. This provision is identical to section 4006 of the Senate bill.

*Sec. 3007. Clarification that making restitution is a proper condition of supervised release*

This section would remedy an ambiguity relating to restitution as a condition of supervised release. Under 18 U.S.C. 3583(c) and (e), the court is authorized to consider various sentencing factors set forth in 18 U.S.C. 3553 as a basis for imposing restitution as a condition of supervised release or for revoking or modifying the conditions of supervised release. Supervised release is among the purposes of sentencing enumerated in section 3553, in paragraph (a)(7), but is not among the factors enumerated in section 3583(c) and (e). However, 18 U.S.C. 3583(c) also authorizes the court to impose any condition of supervised release that is an authorized condition of probation under 18 U.S.C. 3563(b), and making restitution is among those conditions (see section 3564(b)(2)). Thus, it appears clear that a court has authority to impose a restitution condition upon a term of supervised release. But the absence of a reference to section 3553(a)(7) in the revocation subsection of section 3583 raises a question whether, even though it is an authorized condition of supervised release, a court has authority to revoke or modify the term for willful failure to make restitution. Such authority is probably implicit and was surely intended by Congress. See *United States* v. *Payan*, 992 F.2d 1387, 1395–96 (5th Cir. 1993). This amendment would provide a reference to section 3553(a)(7) in the supervised release statute and remove any ambiguity in this regard. Of course, even under the amended statute, a court could not revoke or modify the defendant's supervised release for failure to pay restitution unless the defendant had the resources to pay and willfully refused to do so. See *Bearden* v. *Georgia*, 461 U.S. 660 (1983); *Payan*, 992 F.2d at 1396–97. This provision is identical to section 4007 of the Senate bill.

TITLE IV—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2002

*Sec. 4001. Short title*

This section provides that the short title of the act shall be the ''Criminal Law Technical Amendments Act of 2002.'' This provision is similar to section 5001 of the Senate bill.

*Sec. 4002. Technical amendments relating to criminal law and procedure*

This section makes over 60 separate technical changes to various criminal statutes by correcting missing and incorrect words, margins, punctuation, redundancies, outmoded fine amounts, cross references, and other technical and clerical errors. This provision is identical to section 5002 of the Senate bill.

*Sec. 4003. Additional technicals*

Section 4003 makes additional technical changes to criminal statutes, and is similar to section 5003 of the Senate bill.

*Sec. 4004. Repeal of outmoded provisions*

This provision is similar to section 5004 of the Senate bill.

*Sec. 4005. Amendments resulting from public law 107–56*

This provision is identical to section 5005 of the Senate bill.

*Sec. 4006. Cross reference correction*

The conferees agree to add this section to make a technical correction to the International Convention for the Suppression of Terrorist Bombings.

TITLE V—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

*Sec. 5001. Paul Coverdell Forensic Sciences Improvement Act*

Section 5001 amends the Paul Coverdell National Forensic Sciences Improvement Act of 2000 to permit local crime labs to receive grants. In addition, the section allows the Attorney General to make discretionary grants to any State or locality after considering the state crime rate and existing crime lab resources and requires each State to include in its report to the Attorney General on the comparison of pre-grant and post-grant forensic science capabilities, and an identification of the number and type of cases currently accepted by the laboratory. This provision is identical to section 7001 of the Senate bill.

*Sec. 5002. Authorization of appropriations*

Section 5002 authorizes to be appropriated for each of fiscal years 2002 through 2007 such sums as necessary for the Center for Domestic Preparedness of the Department of Justice in Anniston, Alabama; the Texas Engineering Extension Service of Texas A&M University; the Energetic Materials Research and Test Center of the New Mexico Institute of Mining and Technology; the Academy of Counterterrorist Education at Louisiana State University; the National Exercise, Test, and Training Center of the Department of Energy, located at the Nevada test site; the National Center for the Study of Counter-Terrorism and Cyber-Crime at Norwich University; and the Northeast Counterdrug Training Center at Fort Indiantown Gap, Pennsylvania. This provision is similar to section 7002 of the Senate bill.

DIVISION C—IMPROVEMENTS TO CRIMINAL JUSTICE, CIVIL JUSTICE, IMMIGRATION, JUVENILE JUSTICE, AND INTELLECTUAL PROPERTY AND ANTITRUST LAWS

TITLE I—CRIMINAL JUSTICE, CIVIL JUSTICE AND IMMIGRATION

Subtitle A—General Improvements

*Sec. 11001. Law Enforcement Tribute Act*

Section 11001 makes findings regarding the number of law enforcement and public safety officers currently serving in the United States and the number assaulted, injured or killed in the line of duty each year. Congress finds that these officers risk their safety to serve the citizens of their communities. This section makes the finding that many of the communities do not have the resources to properly honor the fallen officers that have served them.

This section authorizes the Attorney General to award matching grants up to 50 percent of the cost of the tribute directly to a State, local government or Indian Tribe in an amount not to exceed $150,000. It provides that Indian Tribes may use any funds appropriated by Congress for activities of the Bureau of Indian Affairs or Indian tribal government to meet the matching requirements.

This section also requires any application for funds under this bill to meet the criteria established by the Attorney General. It requires the Attorney General to provide an annual report to provide Congress with information regarding the number of grants awarded, the amount of funds provided for those grants, and the activities for which the funds were used.

This section includes an authorization of $3 million for each fiscal year 2002–2006, which results in a total authorization of $15 million over 5 years.

*Sec. 11002. Disclosure of grand jury matters relating to money laundering offenses*

In general, information relating to the investigation of a matter before a grand jury is subject to strict protection and may not be disclosed. Section 3322 of title 18, United States Code, provides limited exceptions to this rule, permitting bank regulators to obtain information in certain cases to ensure that they can continue to supervise banking organizations involved in law enforcement investigations. The statute, enacted following the savings and loan crisis and the extensive law enforcement efforts necessitated by bank and thrift failures, does not, however, cover money laundering cases. Section 11002 would amend 18 U.S.C. 3322 so that the Justice Department may obtain a court order to share grand jury information with bank supervisors if an investigation involves money laundering.

*Sec. 11003. Grant program for State and local domestic preparedness support*

This section makes technical corrections and adds additional uses to the Office of Domestic Preparedness grants to support state and local law enforcement agencies and other first responders prepare for and prevent terrorist attacks as authorized by section 1014 of the USA PATRIOT Act (Public Law 107–56).

The conferees strongly encourage the Department of Justice through the Office of Domestic Preparedness to support a public safety pilot project initiated by the Pennsylvania State Association of Boroughs designed to inventory the infrastructure and resources of five participating central Pennsylvania boroughs using GIS technology for the purpose of analyzing security risks and possible responses. Data collected on the five boroughs will be stored in an online searchable database or ''information warehouse.'' Data collected will include roads, water resources, stadiums, energy plants, hazardous materials locations and other assets.

*Sec. 11004. United States Sentencing Commission access to NCIC terminal*

This section authorizes the U.S. Sentencing Commission to access the National Crime Information Center information system at the Federal Bureau of Investigation.

*Sec. 11005. Danger pay for FBI agents*

Section 11005 provides special ''danger pay'' allowances for FBI agents in hazardous duty locations outside the United States, as is provided for agents of the Drug Enforcement Administration. The president's budget submission for fiscal years 2002 and 2003 requested this change in law. This section is identical to section 210 of the Senate-reported bill.

*Sec. 11006. Police corps*

Section 11006 extends the Police Corps' authorization for an additional four years. It also deletes the provisions that now give $10,000 a year to participating police agencies, thereby reducing the per-officer cost of the program by 30% and making funds available to support more officers; and updates the maximum for scholarship payments, from $7,500 (set when the bill was introduced in 1989) to $10,000 per year.

*Sec. 11007. Radiation exposure compensation technical amendments*

The Radiation Exposure Compensation Act (''RECA'') Amendments of 2000, P.L. 106–245, inadvertently eliminated some claimants previously eligible for compensation, and made it more difficult for other claimants to prove eligibility. The technical amendments included in section 11007 are:

Duration of Employment Standard as an Alternative to Radiation Exposure Levels—Under RECA as amended by P.L. 106–245, uranium miners are required to prove exposure to at least 40 working level months (WLMs) of radiation. Uranium millers and ore transporters are required to demonstrate employment in a mill or as an ore transporter for one full year. During the last congressional session, proposed amendments to P.L. 106–245 by Senators Hatch and Daschle sought to eliminate the WLM exposure requirement for miners and substitute a one-year duration of employment requirement—identical to the one in place for millers and ore transporters. There are many miners, however, who worked for less than one year in uranium mines but who still were exposed to significant levels of radiation exposure and could easily qualify for eligibility with a 40 WLM standard. The proposed technical amendment would allow uranium miners to qualify by meeting either the 40 WLM exposure standard or the one year duration of employment standard.

Reinsert a ''Downwinder'' Area Erroneously Stricken from Act by P.L. 106–245—In amending the list of ''downwinder'' areas, P.L. 106–245 inadvertently eliminated a portion of Mohave County, Arizona (located north of the Grand Canyon) that was previously compensable under RECA. As a consequence, claimants who reside in this portion of Mohave County are no longer eligible for compensation. The proposed technical amendment would again include this area in the definition of ''downwinder'' areas.

Remove Disparity for Downwinder and Onsite Participant ''Lung Cancer'' Claimants—P.L. 106–245 added seven new cancers to the list of compensable cancers for the ''downwinder'' and ''onsite participant'' provisions of RECA. These include: cancers of the male breast, salivary gland, urinary bladder, brain, colon, ovary and lung. With the exception of lung cancer, the Act now requires all compensable cancers to be ''primary''—to originate in the specified organ or tissue. The proposed technical amendment would require that all compensable cancers be ''primary'' and thus eliminate the distinction inadvertently created by the amendments between lung cancer claimants and claimants with other compensable cancers.

Remove Inconsistent Treatment for Claimants with In Situ Lung Cancers—As a result of the recent amendments, RECA treats ''downwinder'' and ''onsite participant'' claimants with in situ lung cancer more stringently than uranium worker claimants. Presently, under the amended ''downwinder'' and ''onsite participant'' provisions, compensation is available for lung cancer ''other than in situ lung cancer that is discovered during or after a post-mortem exam.'' This restricts compensation for in situ lung cancer to claimants who are living. No similar restriction exists for uranium worker claimants with in situ lung cancer. The proposed technical amendment would ensure consistent treatment of in situ lung cancer among all categories of claimants, and eliminate the distinction based on the timing of lung cancer diagnosis.

Uranium Miners, Mill Workers, and Ore Transporters with Lung Cancer Should Not be Required to Show Evidence of Non-Malignant Respiratory Disease—As amended by P.L. 106–245, RECA requires (in cases where the claimant is living) the submission of the same medical documentation for proof of a ''non-malignant respiratory disease'' and ''lung cancer.'' While the documentation required is appropriate for purposes of establishing a non-malignant respiratory disease,

it is not medically appropriate for establishing lung cancer. The requirement precludes most lung cancer claimants who do not also suffer from a non-malignant respiratory disease from establishing eligibility for compensation. The proposed technical amendment would eliminate the requirement that claimants with lung cancer also submit proof of a non-malignant respiratory disease.

Requiring Claimants to Prove Uranium Mines in States Not Designated as ''AEC Mines'' is Inappropriately Restrictive—P.L 106–245 amended the Act to allow uranium miner claimants to qualify for compensation if an additional state not designated in the Act establishes that the ''Atomic Energy Commission'' (AEC) operated a uranium mine in the State between January 1, 1942 and December 31, 1971. The provision states that once the State has been certified for inclusion as a uranium mining state, a claimant may demonstrate employment in that state. The AEC, however, did not exist prior to January 1, 1947. Maintaining the requirement is confusing for claimants employed in uranium mines between 1942 and 1946 in a state other than the one designated in the Act and may prevent them from qualifying for compensation. The proposed technical amendment would eliminate the requirement that a state operated an AEC uranium mine.

Section 6(i) ''Issuance of Regulations'' Misplaced—The new provision regarding ''issuance of revised regulations'' should amend ''Section 6(k) Issuance of Regulations, Guidelines and Procedures.'' P.L. 106–245 inadvertently amends ''Section 6(i) Use of Existing Resources.''

Section on ''Affidavits'' Misplaced—P.L. 106–245 fails to enumerate a section for the newly-added provision regarding ''affidavits.'' The provision regarding affidavits should be added as new section ''Section 6(m) Affidavits.''

Omission of Uranium Millers and Ore Transporters from ''Full Settlement of Claims'' Provision—P.L. 106–245 did not amend the Act's ''full settlement of claims'' provision (Sec. 6(e)) to provide that acceptance of payment under the new claimant categories—uranium millers and ore transporters—shall be in full settlement of all claims that individual may have against the United States. Presently, the provision applies only to the original RECA claimant categories. The technical amendment would correct the omission by providing that acceptance of payment shall be in full settlement of claims arising out of exposure to radiation with respect to all clamant categories. The technical amendment also takes into consideration the availability of additional compensation under the new Department of Energy compensation program (Energy Employees' Occupational illness Compensation Program Act).

''Choice of Remedies'' Provision Requires Clarifying Language—P.L. 106–245 did not amend the Act's ''choice of remedies'' provision which prevents double recovery for individuals seeking payment under multiple sections of the Act. Presently, the Act's ''choice of remedies'' provision eliminates double recovery as between ''Downwinders,'' ''Onsite participants,'' and ''Uranium Miners.'' With the addition of the two new claimant categories—''Millers'' and ''Ore Transporters''—the provision is presently unclear as to whether multiple payments are now available. The technical amendment would clarify the ''choice of remedies'' provision to plainly state that there is no possibility of a double recovery under the amended Act.

Section on ''GAO Reports'' Misplaced—P.L 106–245 fails to enumerate a section for the provision regarding ''GAO Reports.'' The provision regarding GAO Reports should be added as new section ''Sec. 14. GAO Reports.''

*Sec. 11008. Federal Judiciary Protection Act of 2002*

Section 11008 increases the maximum prison term for forcible assaults, resistance, intimidation, or interference with a Federal judge, Federal law enforcement officer, or U.S. official from 3 years imprisonment to 8 years and increases the maximum prison term for use of a deadly weapon or infliction of bodily injury against a Federal judge, Federal law enforcement officer, or U.S. official from 10 years imprisonment to 20 years.

This section also increases the maximum prison term for actual or attempted influencing, impeding, or retaliating against a Federal judge, Federal law enforcement officer, or U.S. official by threatening a family member of the employee, from 5 to 10 years, and from 3 to 6 years if the threat is to commit an assault.

In addition, Section 11008 increases the maximum prison term from 5 to 10 years for threats of injury or kidnapping of any person mailed to a Federal judge, Federal law enforcement officer, or U.S. official, and from 3 to 6 years for extortionate threats to a Federal judge, Federal law enforcement officer, or U.S. official.

It directs the U.S. Sentencing Commission to amend the Sentencing Guidelines to enhance penalties for assaults and threats against a Federal judge, Federal law enforcement officer, and U.S. official engaged in their official duties.

*Sec. 11009. The James Guelff and Chris McCurley Body Armor Act of 2002*

Section 11009 defines the terms ''body armor,'' ''law enforcement agency,'' and ''law enforcement officer.'' It directs the U.S. Sentencing Commission to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor. It also states that it is the Sense of the Senate that a minimum two-level enhancement is appropriate.

Section 11009 makes it unlawful for a person who has been convicted of a violent felony to purchase, own, or possess body armor. It provides an affirmative defense against prosecution if the felon wore armor after obtaining permission from employer, and possession of armor was necessary for safe performance of lawful business activity. Individuals who violate this prohibition are guilty of a felony subject a fine and a maximum sentence of three years.

This provision also empowers Federal law enforcement agencies to donate surplus body armor directly to local and state law enforcement departments. These agencies include the Administrator of the Drug Enforcement Administration, the Director of the FBI, the Commissioner of the Immigration and Naturalization Service, the Director of the U.S. Marshals service, the Director of the Bureau of Alcohol, Tobacco, and Firearms, the Commissioner of Customs, and the Director of the United States Secret Service. Only body armor that is not required by the Federal government is eligible for donation.

*Sec. 11010. Persons authorized to serve search warrant*

Section 11010 amends section 2703 of title 18 by stating that an officer's presence is not required to serve or execute a search warrant directed to a provider of electronic communication service or remote computing service for records or other information pertaining to a subscriber of that service.

*Sec. 11011. Study on reentry, mental illness, and public safety*

Section 11011 requires the Attorney General to conduct a study of offenders with mental illness who are released from prison or jail to determine how many such offenders qualify for Medicaid, SSI, or SSDI, how many of those who qualify are actually enrolled in those programs, and how enrollment affects whether such offenders commit further crimes, among other things.

*Sec. 11012. Technical amendment to Omnibus Crime Control Act*

The current version of Section 802(b) [42 U.S.C. (§3783(b)] of the Omnibus Crime Control and Safe Streets Act gives rights of notice and appeal to applicants for the Violence Against Women Act (VAWA) Grants to Encourage Arrests program (Part U) whose applications have been denied. The Grants to Encourage Arrests program is a discretionary grant program and historically, a discretionary grant applicant is not afforded a right of appeal of an application denial. This is based on the rule that formula grants create an ''entitlement,'' which gives formula grantees certain due process rights of notice and hearing in the event a formula grant application is denied. Discretionary grants, on the other hand, do not create any entitlement, and consequently discretionary grant applicants do not have such due process rights.

A second problem with the current version of Section 802(b) is that it does not give VAWA formula grant applicants these notice and appeal rights which they should have under the entitlement concept, because it does not cite to the STOP grant program in Part T, which is the VAWA formula grant program. This is illustrated by the language of Section 802(b) by which all formula grant programs under the Omnibus statute (except VAWA's STOP program) are covered by this version of Section 802(b), and no other discretionary grant program are referenced by this provision (except the incorrect reference to VAWA's Grants to Encourage Arrest program, which would be changed by this amendment). The logical conclusion is that the reference to Part U was a misdesignation, and that Congress intended to reference Part T, the STOP formula grant program, and not Part U, the discretionary Grants to Encourage Arrest program. Accordingly, this section amends section 802(b) to give the right of appeal to VAWA STOP formula applicants and would also eliminate the right of appeal for discretionary grant applicants, as Congress clearly intended.

*Sec. 11013. Debt collection improvement*

Section 11013 expands the use of the Department's Three Percent Debt Collection Fund. This fund was established by Section 108 of P.L. 103–121. The language of that Act permits the Department to credit three percent of all civil debt collections resulting from Department debt collection activities to the Working Capital Fund (the Three Percent Fund) and to use those deposits to the Fund only for the costs of processing and tracking civil debt collection litigation. The proposed language would expand the uses of the Three Percent Fund and establish a two tier structure for the expanded use of those funds.

The first tier permits the Department would use deposits in the fund for processing and tracking both civil and criminal debt collection. Thereafter, if there are amounts remaining in the Fund after paying the costs of processing and tracking, the funds could be used for financial systems and for debt-collection related personnel, administrative, and litigation expenses. The second tier permits the Department to use balances remaining after the costs of tracking and processing have been paid to support its financial management systems and to pay the costs of personnel, administration and other debt-collection-related litigation expenses.

*Sec. 11014. SCAAP authorization*

Section 10014 reauthorizes the State Criminal Alien Assistance Program (8 U.S.C. section 1231(i)(5)) through fiscal year 2004.

*Sec. 11015. Use of annuity brokers in structured settlements*

Section 11015 reforms the Department of Justice's practice for using annuity brokers in structured settlements in two ways. First, it directs the Attorney General to establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit the list, and any updates to such list, to all United States Attorneys. Second, this provision permits the United States Attorney (or his designee) involved in any settlement negotiations (except those negotiated exclusively through the Civil Division of the Department of Justice) to have the exclusive authority to select an annuity broker from the list of such brokers established by the Attorney General, provided that all documents related to any settlement comply with Department of Justice requirements.

*Sec. 11016. INS processing fees*

Section 11016 states that processing fees for I–94, I–94W, and I–68 forms are to be deposited in the Land Border Inspection Fee Account, as requested by the Bush Administration in its FY 2002 and 2003 budget submissions.

*Sec. 11017. United States Parole Commission extension*

Section 11017 extends the United States Parole Commission, scheduled to cease operations later this year, for an additional three years. There are numerous offenders who remain under the supervision of the Parole Commission, which is responsible for administering the supervised release of District of Columbia offenders. This section also allows current Commissioners to extend their service on the Commission, and asks the Attorney General to conduct a study on whether the Parole Commission is the appropriate entity to administer supervised release for D.C. offenders.

*Sec. 11018. Waiver of foreign country residence requirement with respect to international medical graduates*

Section 11018 extends until 2004 the program authorizing visas for foreign medical graduates wishing to serve in the United States, and raises the number of visas available per State from 20 to 30.

*Sec. 11019. Pretrial disclosure of expert testimony relating to defendant's mental condition*

Section 11019 restores two provisions of Rule 16 of the Federal Rules of Criminal Procedure that were inadvertently omitted when the Supreme Court transmitted a revision of the Rules to Congress on April 29, 2002. The omitted provisions impose reciprocal obligations on the government and defendant, requiring each to disclose their expert witnesses' testimony on the defendant's mental condition bearing on the issue of guilt. The version of the Rules transmitted by the Supreme Court take effect on December 1, 2002, unless Congress acts to modify them. This section simply ensures that the sections that were omitted are not thus deleted from the Rules.

*Sec. 11020. Multiparty, Multiforum Trial Jurisdiction Act of 2002*

Section 11020 would streamline the process by which multidistrict litigation governing disasters are adjudicated. This section would save litigants time and money, but would not interfere with jury verdicts or compensation rates for attorneys.

The genesis of §11020 of the conference report took place during oversight hearings conducted in the 95th Congress by the House Subcommittee on Courts, Civil Liberties and the Administration of Justice (now Courts, the Internet and Intellectual Property). These efforts were joined by those of the Carter Administration to improve judicial machinery by abolishing diversity of citizenship jurisdiction and to delineate the jurisdictional responsibilities of state and federal courts. Following Senate opposition to such expansive change, the Subcommittee narrowed its focus and began to concentrate on the problem of dispersed complex litigation arising out of a single accident resulting in multiple deaths or injuries.[2]

Legislation on this more specific issue was first introduced in both the 98th and 99th Congresses. The House of Representatives subsequently approved legislation highly similar to §11020 of the conference report in the 101st and 102nd Congresses; and the full House Committee on the Judiciary favorably reported this language in the 103rd Congress as well. Moreover, §11020 of the conference report is highly similar to that set forth in §10 of the Subcommittee substitute to H.R. 1252, the ''Judicial Reform Act,'' from the 105th Congress, which the House passed in amended form with §10 fully intact. In addition, during the 106th Congress the House of Representatives passed the precursor to §11020 of the conference report, H.R. 2112, by voice vote under suspension of the rules. Section 11020 of the conference report is now largely culled from §3 of H.R. 860, which the House passed under suspension of the rules on March 14, 2001. No hearings on H.R. 860 were held in the 107th Congress given the ample legislative history that preceded it from the 95th Congress through the 106th. The Judicial Conference and the Department of Justice have also supported these previous legislative initiatives.

The need for enactment of §11020 of the conference report was articulated by an attorney who testified on behalf of a major airline manufacturer at the June 16, 1999, hearing on H.R. 2112.[3] It is common after a serious accident to have many lawsuits filed in several states, in both state and federal courts, with many different sets of plaintiffs' lawyers and several different defendants. Despite this multiplicity of suits, the principal issue that must be resolved first in each lawsuit is virtually identical: Is one or more of the defendants liable? Indeed, in lawsuits arising out of major aviation disasters, it is common for the liability questions to be bifurcated and resolved first, in advance of any trial on individual damage issues. The waste of judicial resources—and the costs to both plaintiffs and defendants—of litigating the same liability question several times over in separate lawsuits can be extreme.

Different expert consultants and witnesses may be retained by the different plaintiffs' lawyers handling each case. The court in each lawsuit can issue its own subpoenas for records and for depositions of witnesses, potentially conflicting with the discovery scheduled in other lawsuits. Critical witnesses may be deposed for one suit and then redeposed by a different set of lawyers in a separate lawsuit. Identical questions of evidence and other points of law can arise in each of the separate suits, meaning that the parties in each case may have to brief and argue—and each court may have to resolve—the same issues that are being briefed, argued, and resolved in other cases, sometimes with results that conflict.

Current efforts to consolidate all state and federal cases related to a common disaster are incomplete because current federal statutes restrict the ways in which consolidation can occur—apparently without any intention to limit consolidation. For example, plaintiffs who reside in the same state as any one of the defendants cannot file their cases in federal court because of a lack of complete diversity of citizenship, even if all parties to the lawsuit want the case consolidated. For those cases that cannot be brought into the federal system, no legal mechanism exists by which they can be consolidated, as state courts cannot transfer cases across state lines. In sum, full consolidation cannot occur in the absence of federal legislative redress.

The changes set forth in §11020 of the conference report speak directly to these problems. The revisions should reduce litigation costs as well as the likelihood of forum-shopping in airline accident cases; and an effective one-time determination of punitive damages would eliminate multiple or inconsistent awards arising from multiforum litigation.

*Sec. 11020 Multiparty, Multiforum Jurisdiction of District Courts.* Section 11020 of the conference report would bestow original jurisdiction on federal district courts in civil actions involving minimal diversity jurisdiction among adverse parties based on a single accident where at least 75 persons have died. The district court in which such cases are consolidated would retain those cases for determination of liability and punitive damages.

More specifically, subsection 11020 of the conference report creates a new §1369 of Title 28 of the U.S. Code which confers original jurisdiction upon the federal district courts of any civil action involving minimal diversity between adverse parties that arise from a single accident and where at least 75 people have died in the accident if (a) a defendant resides in a state and a substantial part of the accident occurred in another state or other location (regardless of whether the defendant is also a resident of the state where a substantial part of the accident occurred); any two defendants reside in different states (regardless of whether such defendants are also residents of the same state or states); or (c) substantial parts of the accident occurred in different states.

Subsection (b) of new §1369 creates an exception to the minimum diversity rule. In brief, a U.S. district court may not hear any case in which a ''substantial majority'' of plaintiffs and the ''primary'' defendants are all citizens of the same state; and in which the claims asserted are governed ''primarily'' by the laws of that same state. In other words, only state courts may hear such cases. (This feature was one of three changes proffered to the Senate in an effort to develop greater support for H.R. 2112 in the waning days of the 106th Congress.

Subsection (c) of new §1369 sets forth certain ''special rules'' and definitions. They include the following:

(1) *Minimal Diversity*. Exists between adverse parties if any party is a citizen of a state and any adverse party is a citizen of another state, a citizen/subject of a foreign state, or a foreign state.

(2) *Corporation*. Deemed to be a citizen of any state, and a citizen or subject of any foreign state, in which it is incorporated or has

[2] Letter from Michael J. Remington, former Chief Counsel to the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Committee on the Judiciary, U.S. House of Representatives, to Representative F. James Sensenbrenner, Jr. (July 14, 1999).

[3] Letter on H.R. 2112 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 106th Cong., 1st Sess. (June 16, 1999) (statement of Thomas J. McLaughlin, Esq., Perkins Coie, LLP, Attorneys for the Boeing Company at 4–9)

its principal place of business; and is deemed to be a resident of any state in which it is incorporated or licensed to do business.

(3) *Injury*. Physical harm to a person, and physical damage or destruction of tangible property, but only if physical harm exists.

(4) *Accident*. A sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 75 natural persons.

(5) *State*. Includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Subsection (d) of new §1369 permits any person with a claim arising from an accident as defined by the terms of the bill to intervene as a party plaintiff, even if that person could not have brought an action in district court as an original matter.

Pursuant to subsection (e) of new §1369, a federal district court in which an action is pending under the terms of the bill must promptly notify the Multidistrict Litigation Panel (MDLP)[4] of the pendency.

Section 11020(b) of the conference report amends the general federal venue statute[5] by permitting any action under the bill to be brought in any district court in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

Section 11020(c) of the conference report permits a defendant in a civil action in state court to remove to the appropriate federal district court under 28 U.S.C. §1441 if:

(A) the action could have been brought under the terms of §1369, or

(B) The defendant is a party to an action which is or could have been brought pursuant to the terms of the bill in a federal district court and arises from the same accident as the state court action.

New §1441(e)(2)-(5), as created by §11020(c) of the conference report, also sets forth the procedure for removal, along with the terms by which an action is remanded back to state court for determination of damages, including appellate procedures governing liability. Any decision under §1441(e) concerning remand for the determination of damages is not reviewable by appeal or otherwise under new paragraph (6).

Finally, §11020(d) of the conference report establishes service-of-process authority (new §1697) for actions brought under its terms.

The amendments made by §11020 of the conference report shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of enactment of the Act.

*Sec. 11021. Additional place of holding court in the Southern District of Ohio*

This section authorizes judges in the Southern District of Ohio to hold court in St. Clairsville, Ohio.

*Sec. 11022. Direct shipment of wine*

This section states that during any period that the Federal Aviation Administration has in effect restrictions on airline passengers to ensure their safety, a person who purchases wine while visiting a winery can ship wine to another state provided that the purchaser could have carried or brought the wine into the state to which the wine is shipped. Further, the purchaser must be of legal age to purchase alcohol, the shipment must require an adult signature upon delivery and the wine must be for personal use only and not for resale. Within two years of the date of enactment, and at two-year intervals thereafter, the Attorney General, in conjunction with the FAA Administrator, must submit a report to the House and Senate Committees on the Judiciary on the implementation of this provision.

*Sec. 11023. Webster Commission implementation report*

This section implements a recommendation in the report of the Commission for Review of FBI Security Programs, dated March 31, 2002 (''Webster Commission''). Subsection (a) would require the FBI Director to submit to the appropriate Committees of Congress a plan for implementation of the Webster Commission recommendations, including the costs of such implementation. Subsection (b) would require the FBI Director to submit to the appropriate Committee annual reports on implementation of this plan for three years thereafter. Subsection (c) defines the appropriate Committees as the Senate and House Judiciary and Appropriations Committees, the Senate Select Committee on Intelligence, and the House Permanent Select Committee on Intelligence.

*Sec. 11024. FBI police*

This title provides statutory authorization for an already existing FBI police force that protects FBI buildings and adjacent streets. Currently, the FBI police suffers from a high rate of turnover due to lower pay and fewer benefits than the Uniformed Division of Secret Service or Capitol and Supreme Court police. This title would close this disparity.

The section defines the terms ''Director,'' ''FBI buildings and grounds,'' and ''FBI police'' as used in the title. It authorizes the FBI Director to establish the FBI police, subject to the Attorney General's supervision, to protect persons and property within FBI buildings and grounds, including adjacent streets and sidewalks within 500 feet. FBI buildings and grounds would include any building occupied by the FBI and subject to FBI supervision and control, the land on which such building is situated, and enclosed passageways connecting such buildings. FBI police would be uniformed representatives of the FBI with authority to make arrests and otherwise enforce federal and D.C. laws, carry firearms, prevent breaches of the peace, suppress unlawful affrays and unlawful assemblies, and hold the same powers as sheriffs and constables. FBI police would not have authority to serve civil process. Pay and benefits would be equivalent to pay and benefits for the Secret Service Uniformed Division. The section provides that the authority of the Washington, D.C. Metropolitan Police would not be affected by this title.

*Sec. 11025. Report on FBI information management and technology*

This section would require the FBI Director, with appropriate commends from other components of the Department of Justice, to submit to the Congress a report on FBI information management and technology, including whether the authority is needed to waive normal procurement regulations. The report would provide the results of pending Justice Management Council studies and Inspector General audits and submitting a 10–point plan for improving FBI information management and technology to consider (1) to what extent appropriate FBI technology management positions should be personnel with commercial sector experience, (2) how access to the most sensitive information can be audited so that suspicious activity is subject to near contemporaneous review, (3) how critical information systems can employ a public key infrastructure, (4) how security features can be tested (5) which FBI employees should receive instruction in records and information management, (6) whether a reserve should be established for research and development, (7) whether administrative requirements for less costly software purchases are necessary, (8) whether the FBI should contract with an expert technology partner, (9) whether procedures should be instituted to procure through contracts of other agencies as necessary; and (10) whether system upgrades should be tested before operational deployment.

*Sec. 11026. GAO report on crime statistics reporting*

This section requires the General Accounting Office to report on how crime statistics are reported and used by Federal law enforcement agencies. Specifically, the report would identify policies that allow a case to be claimed or reported by more than one law enforcement agency, the conditions that allow such reporting to occur, the number of such cases reported during a 4–year period, similar multiple claims of credit for arrests, the use of such statistics for administrative and management purposes, and relevant definitions. The report would include recommendations for how to eliminate unwarranted and duplicative reporting. Federal law enforcement agencies would be required to comply with GAO requests for information necessary to prepare the report.

*Sec. 11027. Crime-free rural States grants*

Section 11027 authorizes $30 million over three years for the Attorney General to make grants to State criminal justice, Byrne, or other designated agencies to develop rural States' capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.

*Sec. 11028. Motor vehicle franchise contract dispute resolution process*

Section 11028 requires that whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to the contract, arbitration may be used to settle the controversy only if both parties consent in writing after such controversy arises. This section also requires the arbitrator to provide the parties with a written explanation of the factual and legal basis for the decision. The section provides that its provisions shall apply only to contracts entered into, modified, renewed or extended after the date of enactment.

*Sec. 11029. Holding court for the Southern Sistrict of Iowa*

Section 11029 states that the U.S. District Court for the Southern District of Iowa may hold court in Rock Island, Illinois, from January 1, 2003 through July 1, 2005, while the Davenport, Iowa courthouse undergoes renovation.

*Sec. 11030. Posthumous citizenship restoration*

Section 11030 extends the deadline for allowing families of non-citizen veterans who died while serving honorably in past wars to apply for purely honorary posthumous citizenship on the part of the deceased non-citizen veteran.

*Sec. 11030A. Extension of H–1B status for aliens with lengthy adjudications*

Section 11030A allows for extension of H–1B status for aliens who file a labor certification more than 365 days before the end of their sixth year, and file an immigration petition before the end of their sixth year. This provision recognizes the lengthy processing times of the Department of Labor.

[4] 28 U.S.C. §1407. The Mutidistrict Litigation Panel—a select group of seven federal judges picked by the Chief Justice—helps to consolidate lawsuits which share common questions of fact filed in more than one judicial district nationwide. Typically, these suits involve mass torts—a plane crash, for exmaple—in which the plaintiffs are from many different states. All things considered, the panel attempts to identify the one U.S. district court nationwide which is best adept at adjudicating pretrial matters. The panel then remands individual cases back to the districts where they were originally filed for trial unless they have been previously terminated.

[5] 28 U.S.C. §1391.

*Sec. 11030B. Application for naturalization by alternative applicant if citizen parent has died*

Section 11030B amends the Immigration and Nationality Act to authorize the submission of an application for naturalization under section 322 of such Act on behalf of a child by the child's grandparent or legal guardian, if the parent who otherwise would be authorized to submit such application is deceased.

Subtitle B—EB–5 Amendments

CHAPTER 1—IMMIGRATION BENEFITS

*Sec. 11031. Removal of conditional basis of permanent resident status for certain alien entrepreneurs, spouses, and children*

Section 11031(a): This subsection sets forth new procedures for certain investors to remove conditional resident status.

Section 11031(b)(1): This subsection defines the investors who qualify under this section. They must meet three conditions: (1) they filed an I–526 petition and had it approved by the INS between January 1, 1995 and August 31, 1998; (2) they obtained conditional resident status; and (3) before the date of enactment of this bill they filed an I–829 to remove their conditional resident status.

Section 11031(b)(2): This subsection allows investors whose I–829 petitions have been denied an opportunity to file a motion to reopen them, as long as they file the motion to reopen within 60 days after enactment. If the investor is outside the United States, the INS must parole the person back into the country unless they are inadmissible or deportable or they had a material misrepresentation in their petition. If an investor whose I–829 petition was denied is in removal proceedings, they too can file a motion to reopen to apply under this bill.

Section 11031(c): This subsection sets forth procedures to determine whether investors can have their conditions removed.

Section 11031(c)(1): This subsection states that the INS has 180 days after enactment to decide three things: (1) whether the I–829 petition has any material misrepresentations; (2) whether the investment created or saved 10 jobs; and (3) whether the investor has substantially complied with the investment requirement ($1 million or $500,000). The section also states that investments in regional centers or in troubled businesses count.

Section 11031(c)(1)(D): This subsection gives investors a choice of three dates by which to measure their compliance: (1) the date the I–829 petition is filed; (2) six months after the I–829 petition is filed; or (3) the date the INS makes its determination.

Section 11031(c)(1)(E): This subsection states that if the investor meets the jobs and investment requirements and has not made a material misrepresentation, the INS will remove the conditional resident status and the investor and family members become real permanent residents.

Section 11031(c)(1)(F): This subsection states that if the INS finds against the investors on any of the three grounds, the Service must notify the investor, and the investor receives a chance to rebut the adverse facts. If the investor loses on the jobs or investment requirement, the INS will continue the investor's conditional resident status for two years. During that time the investor can try to meet those requirements (see below). If the INS finds that the investor made a material misrepresentation, the INS will terminate the investor's conditional resident status. The investor can appeal to the BIA and then seek judicial review. During administrative or judicial review proceedings the investor remains in conditional resident status.

Section 11031(c)(2): This subsection provides for second determinations two years later for those investors who could not initially demonstrate the necessary number of jobs created or amount invested.

Section 11031(c)(2)(A): This subsection states that an investor can combine investments made earlier with new investments to show that altogether he or she invested the total amount required. This includes investments in limited partnerships.

Section 11031(c)(2)(C): This subsection states that the investor must file another I–829 during the 90 days preceding the two-year anniversary. Failure to file will normally terminate a conditional resident's status. There is a good cause exception.

Section 11031(c)(2)(E): This subsection states that if an investor files another I–829 petition, the INS has 90 days to decide three things: (1) whether the I–829 petition has any material misrepresentations; (2) whether the investment created or saved 10 jobs; and (3) whether the investor has substantially complied with the investment requirement ($1 million or $500,000). The investor can aggregate money invested before and jobs created or saved from the initial investment. As before, investments in regional centers or in troubled businesses count.

Section 11031(c)(2)(F): This subsection states that if the investor meets the job creation and investment requirements and has not made a material misrepresentation, the INS will remove the conditional resident status of the investor and family members, who may become real permanent residents.

Section 11031(c)(2)(G): This subsection states that if the INS finds against an investor on any of the three grounds, the Service must notify the investor, who may attempt to rebut the adverse facts. If the investor loses, the INS will terminate the investor's conditional resident status.

Section 11031(d): This subsection states that an investor whose conditional resident status is terminated can have an immigration judge review that decision.

Section 11031(e): This subsection provides that any alien who was admitted on a conditional basis by virtue of being the child of an EB–5 investor shall still be considered a child for purposes of this title.

Section 11031(f): This subsection defines ''full-time'' employment to mean a position that requires at least 35 hours a week.

*Sec. 11032. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children*

Section 11032 provides similar procedures for EB–5 investors whose I–526 petitions were approved, but who never became conditional residents because the INS never acted on their adjustment of status applications or because they remained overseas. The key provisions of this section are outlined below.

Section 11032(a): This subsection states that the INS must approve applications under this section within 180 days after enactment.

Section 11032(b): This subsection defines an eligible individual as an investor who filed an I–526 petition that was approved by the INS between January 1, 1995 and August 31, 1998, and who then timely filed an adjustment of status application or applied for an immigrant visa overseas. Investors are not eligible if they are inadmissible or deportable on any ground.

Section 11032(c): This subsection states that if the INS revoked the I–526 petition on the ground that the investor failed to meet the capital investment requirement, that revocation is to be disregarded for purposes of this bill. If the adjustment of status application or immigrant visa application overseas is not pending on the date of enactment, it is to be treated as reopened if (i) it is not pending because the INS claims the investor never complied with the capital investment requirement or (ii) the investor left the United States without advance parole. If an investor applied for adjustment of status in the United States but is now overseas, the INS will establish a process to let them return to the United States if necessary to obtain adjustment.

Section 11032(e): This subsection states that like investors covered by section 11031 above, investors covered by this section must file an I–829 petition within two years of becoming a conditional resident. The determinations and process are similar for both section 11031 and section 11032 investors. For example, the Attorney General shall credit the investor with funds invested and jobs created or saved both prior to and after the date of enactment. This section gives investors a choice of two dates by which to measure their compliance: (1) the date they filed their adjustment of status application; or (2) the date the INS decides the I–829 petition.

*Sec. 11033. Regulations*

Section 11033 requires the INS to publish implementing regulations within 120 days of enactment. Until regulations are promulgated, the INS may not deny a pending I–829 petition or adjustment of status application relating to an alien covered under the terms of sections 11031 or 11032, or commence or continue removal proceedings against affected EB–5 investors.

*Sec. 11034. Definitions*

Section 11034 states that the terms used in this title shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (''INA''), unless otherwise provided.

CHAPTER 2—AMENDMENTS TO OTHER LAWS

*Sec. 11035. Definition of ''Full-Time Employment''*

Section 11035 defines full-time employment for purposes of section 203(b)(5) of the INA as a position that requiring at least 35 hours a week.

*Sec. 11036. Eliminating enterprise establishment requirement for alien entrepreneurs*

Section 11036 amends section 203(b)(5) of the INA to eliminate the ''establishment'' requirement for EB–5 investors. Instead of showing that they have ''established'' a commercial enterprise, Investors need only that they have ''invested'' in a commercial enterprise. This section also amends section 216A of the INA to eliminate the ''establishment'' requirement for EB–5 investors who have filed I–829 petitions. Instead of showing that they have ''established'' a commercial enterprise, they need only show that they have ''invested'' in a commercial enterprise. They also must show that they have ''sustained'' their investment actions over the two-year period. This section also clarifies that a ''commercial enterprise'' may include a limited partnership. The changes made by this section apply to I–526 and I–829 petitions pending on or after the date of enactment.

*Sec. 11037. Amendments to pilot immigration program for regional centers to promote economic growth*

Section 11037 amends section 610(a) of the 1993 Commerce, State, Justice appropriations act to clarify that an EB–5 regional center can promote increased export sales, improved regional productivity, job creation, or increased domestic capital investment. This accords with a 2000 amendment that became law, amending section 610(c) of the 1993 Act in a similar way. Section 11037 also clarifies that the INS should approve applications for EB–5 regional center status as long as they are based on a general prediction concerning the kinds of commercial enterprises

that will receive capital from investors, the jobs that will be created directly or indirectly as a result of the investment of capital, and the positive economic impacts that will result from the investment of capital.

Subtitle C—Judicial Improvements Act of 2002

*Sec. 11041. Short title*

Section 11041 states that this subtitle may be cited as the ''Judicial Improvements Act of 2002.''

*Sec. 11042. Judicial discipline procedures*

Section 11042 amends Part I of Title 28 to add a new ''Chapter 16: Complaints Against Judges and Judicial Discipline,'' which consists of:

QUOTED SECTION 351: COMPLAINTS; JUDGE DEFINED

Allows any person who alleges that a circuit, district, bankruptcy, or magistrate judge has engaged in improper conduct, or that a judge is unable to perform his duties due to mental or physical disability, to file a written complaint with the clerk of the court of appeals for that judge's circuit. The clerk will present the complaint to the chief judge of the circuit, and to the judge who is the subject of the complaint. If the chief judge is the subject of the complaint, the second-most senior judge will receive the complaint. (The chief judge may also independently identify a complaint without receiving it in writing.)

QUOTED SECTION 352: REVIEW OF COMPLAINT BY CHIEF JUDGE

The chief judge shall expeditiously review any complaint, and can conduct a limited factual inquiry. The chief judge may request that the judge whose conduct is at issue submit a written response, which would not be shared with the complainant without that judge's consent. The chief judge or his or her designee may also communicate with the complainant, the judge, and any other person with knowledge of the matter. The chief judge shall not make findings of fact about any matter reasonably in dispute. The chief judge may issue a written order dismissing the complaint when: (a) it does not follow the rules set out in this statute, (b) when it is directly related to a judicial decision or ruling, (c) when it is frivolous or its allegations are incapable of being established through an investigation, or (d) when the judge's limited inquiry demonstrates that the allegations are false or lack factual foundation. The chief judge may also conclude the proceeding if corrective action has been taken or intervening events have mooted the complaint.

The chief judge shall distribute any written order to the complainant and the subject of the complaint.

A party aggrieved by the decision of the chief judge may petition the circuit's judicial council for review—denial of such petition is not judicially reviewable. If the judicial council accepts the petition, it can refer it for review to a panel of no fewer than five members of the council, including at least two district court judges.

QUOTED SECTION 353: SPECIAL COMMITTEES

If the chief judge does not issue an order dismissing the complaint, he or she shall promptly appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the allegations, providing written notice of such action to the complainant and the subject. The committee shall conduct an investigation as extensive as it feels necessary, and expeditiously file a comprehensive written report with the judicial council of the circuit. The report shall include both the findings of the investigation and recommendations for appropriate action by the judicial council.

QUOTED SECTION 354: ACTION BY JUDICIAL COUNCIL

Upon receipt of a report from the special committee, the judicial council may: (1) conduct any additional investigation it considers necessary, (2) dismiss the complaint, and (3) if the complaint is not dismissed, take any appropriate action to assure the effective and expeditious administration of the courts. (The council may also refer the complaint to the Judicial Conference of the United States for its recommendation.) Such action may include a temporary ban on cases being assigned to the judge who was the subject of the complaint, and a private and/or public censure or reprimand of the judge.

For Article III judges, the council may certify the judge's disability and request that the judge voluntarily retire. But the council may not order removal from office. If the council determines that an Article III judge has acted in a way that might constitute grounds of impeachment, it should promptly certify such determination to the Judicial Conference.

For magistrate judges, the council may direct the chief judge of the district of the magistrate judge to take such action as the council considers appropriate. Any removal of a magistrate or bankruptcy judge shall be in accordance with existing law.

QUOTED SECTION 355: ACTION BY JUDICIAL CONFERENCE

Upon referral from a judicial council, the Judicial Conference shall by majority vote take such action as it considers appropriate, from the sanctions available under section 354. If the Judicial Conference believes that consideration of impeachment may be warranted, it shall send that determination to the House of Representatives. Upon receipt, the Clerk of the House of Representatives shall make the Judicial Conference's determination available to the public. If a judge has been convicted of a State or Federal felony, and exhausted or waived all direct appeals, the Judicial Conference may by majority vote send a determination that consideration of impeachment may be warranted to the House of Representatives, together with appropriate court records. No referral from a judicial council is needed for the Conference to take that step.

QUOTED SECTION 356: SUBPOENA POWER

Provides subpoena powers to judicial councils, special committees, the Judicial Conference, or a standing committee appointed by the Chief Justice for purposes of an investigation under this chapter.

QUOTED SECTION 357: REVIEW OF ORDERS AND ACTIONS

A complainant or judge aggrieved by an action of a judicial council under section 354 can petition the Judicial Conference for review.

QUOTED SECTION 358: RULES

Each judicial council and the Judicial Conference may create such rules as it deems appropriate for proceedings under this chapter. Such rules must include (a) adequate prior written notice to a judge who has been the subject of a complaint; (b) the right of an accused judge to appear before the investigating panel, call witnesses, and present evidence and argument; and (c) the complainant being given the opportunity to appear for proceedings if the panel believes he or she could provide substantial information. Rules must be made public and are subject to modification by the Judicial Conference.

QUOTED SECTION 359: RESTRICTIONS

No judge whose conduct is the subject of investigation can serve upon an investigatory panel, a judicial council, or the Judicial Conference until proceedings under this chapter are terminated. No person has the right to intervene or appear as an amicus in any proceeding before a judicial council or the Judicial Conference under this chapter.

QUOTED SECTION 360: DISCLOSURE OF INFORMATION

Except for referrals to the House of Representatives, all matters related to investigations under this chapter shall be confidential and not disclosed by any person in any proceeding, with certain exceptions.

QUOTED SECTION 361: REIMBURSEMENT OF EXPENSES

When a complaint is dismissed, the judge who was its subject may be reimbursed for reasonable expenses, including attorneys' fees, incurred during the investigation.

QUOTED SECTION 362: OTHER PROVISIONS AND RULES NOT AFFECTED

Nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil or Criminal Procedure, Appellate Procedure, or Evidence.

QUOTED SECTION 363: COURT OF FEDERAL CLAIMS, COURT OF INTERNATIONAL TRADE, COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Each named court shall establish rules consistent with this chapter to evaluate complaints against its judges, and shall have the powers granted by this chapter to a judicial council.

QUOTED SECTION 364: EFFECT OF FELONY CONVICTION

Any judge who has been convicted of a State or Federal felony and has exhausted all available means for direct review of that conviction shall not accrue credit toward retirement benefits or hear or decide cases unless the judicial council of the circuit determines otherwise.

*Sec. 11043. Technical amendments*

Section 11043 makes technical amendments necessitated by the bill.

*Sec. 11044. Severability*

Section 11044 states that if any part of this subtitle is found unconstitutional, the remainder of the Act will not be affected.

Subtitle D—Antitrust Modernization Commission Act of 2002

*Sec. 11051. Short title*

Section 11051 states that this subtitle may be cited as the ''Antitrust Modernization Commission Act of 2002.''

*Sec. 11052. Establishment*

Section 11052 establishes the Commission.

*Sec. 11053. Duties of the Commission*

Section 11053 states that the Commission's duties are to examine whether the antitrust laws are in need of modernization, to solicit the views of all concerned parties, to evaluate proposals, and to prepare and submit a report to Congress and the President.

*Sec. 11054. Membership*

Section 11054 states the Commission will have 12 members, with four appointed by the President, two each by the majority and minority leaders of the Senate, and two each by the Speaker and minority leader of the House. The President's nominees will include two members of the opposing party, to be chosen by that party's Congressional leaders. The President will choose the chair of the Commission, while the Congressional leaders from the other party will choose the vice chair.

*Sec. 11055. Compensation of the Commission*

Section 11055 states that government employees will not be compensated for their service on the Commission, while nongovernment employees will receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule.

*Sec. 11056. Staff of Commission; experts and consultants*

Section 11056 states that the chairperson of the Commission may appoint and terminate an executive director and other necessary staff, and use experts and consultants.

*Sec. 11057. Powers of the Commission*

Section 11057 states that the Commission may hold such hearings and take such testimony as it considers appropriate, may take testimony under oath, and obtain information directly from any executive agency or court.

*Sec. 11058. Report*

Section 11058 states that the Commission shall submit a detailed report to Congress and the President within three years after its first meeting, including recommendations for legislative and administrative action the Commission considers appropriate.

*Sec. 11059. Termination of Commission*

Section 11059 states that the Commission shall cease to exist 30 days after it submits its report.

*Sec. 11060. Authorization of appropriations*

Section 11060 authorizes $4 million to carry out this subtitle.

TITLE II—JUVENILE JUSTICE

Subtitle A—Juvenile Offender Accountability

*Sec. 12101. Short title*

This section provides that the short title of this subtitle may be cited as the ''Consequences for Juvenile Offenders Act of 2002.''

*Sec. 12102. Juvenile offender accountability*

Section 12101 establishes a juvenile offender accountability block grant program for states, authorized at $350,000,000 per year through FY2005.

QUOTED SECTION 1801: PROGRAM AUTHORIZED

Authorizes the Attorney General to provide grants to States, and in certain cases directly to eligible units of local government, for use by States and localities for the purpose of strengthening their juvenile justice systems. Subsection (b) provides an illustrative list of acceptable expenditures for the grant money. Generally, funded programs are aimed at ensuring that juveniles receive appropriate sanctions and face consequences for their wrongdoing.

QUOTED SECTION 1802: GRANT ELIGIBILITY

This section establishes the eligibility criteria for States and localities to receive funding under the grant program. Section 1802(a) provides that States applying for grant funds must provide the Attorney General with information about the proposed activities the State and its localities will carry out with the grant and the criteria by which the State proposes to assess the effectiveness of such activities on achieving the purposes of this part. The applicant must provide the Attorney General with assurances that the State and any localities within the State that qualify for funding have in effect, or will have in effect within one year of submitting its application, policies and programs that provide for a system of graduated sanctions as defined in Section 1802(c).

Section 1802(b) establishes the eligibility criteria for localities, both within States which qualify for funding, and within States that do not qualify or apply for funds, to receive grant funds under the section. Section 1802(b)(1)(A) requires that the localities must provide information about the activities the localities propose to carry out with the subgrant and the criteria by which the locality proposes to assess the effectiveness of such activities. Section 1802(b)(1)(B) requires that localities must provide assurances that a system of graduated sanctions is or will be in effect within one year of applying for the funds.

Section 1802(c) describes the four requirements that a system of graduated sanctions must meet for an applicant to qualify for the grant funds: (1) the sanctions must be imposed on a juvenile offender for each delinquent offense; (2) the sanctions escalate in intensity with each subsequent, more serious delinquent offense; (3) the system have sufficient flexibility to allow for individualized sanctions and services suited to the individual juvenile offender; and (4) the system should accord appropriate consideration to public safety and victims of crime.

Section 1802(d) provides that a State or locality may qualify for the grant funds even if its system of graduated sanctions is discretionary. A State or locality does not have to require all of its juvenile courts to impose graduated sanctions or to impose them in every case. In States and localities where the imposition of graduated sanctions is discretionary, the juvenile courts that do not impose graduated sanctions must report at least annually to the applicable State or locality why graduated sanctions were not imposed in all such cases.

Section 1802(e) defines the terms ''discretionary'' and ''sanctions.'' The term discretionary means that each and every juvenile court in a State or locality does not have to impose a system of graduated sanctions. The term sanctions means tangible, proportional consequences that hold juvenile offenders accountable for the offense committed. A sanction may include, but is not limited to, counseling, restitution, community service, a fine, supervised probation, or confinement.

QUOTED SECTION 1803: ALLOCATION AND DISTRIBUTION OF FUNDS

Section 1803(a) provides that each State is to receive 0.50 percent of the total grant funds. The term ''State'' is defined in Section 1809. The remaining funds are then to be distributed among the States based on the size of each State's juvenile population.

Section 1803(b)(1) requires that a participating State must distribute to its participating localities 75 percent of the total grant funds the State receives. This ''pass-through'' provision is aimed at ensuring that localities receive most of the funding when they bear most of the juvenile justice expenditures.

Section 1803(b)(2) provides for a waiver of the pass-through provision when the State is responsible for more than 25 percent of the total juvenile justice expenditures in the State. The State may seek a waiver of the pass-through requirement from the Attorney General so that it may keep a share of the grant funds equal to its share of the total expenditures in that State.

Section 1803(b)(3) provides an allocation formula to distribute the grant funding among the localities within a State. The allocation formula is intended to provide maximum resources to the localities that bear the largest burden in administering the juvenile justice system in the participating State. Under the formula, each State determines the amount that each of its localities receives, based on a combination of juvenile justice expenditures and the level of violent crime in each locality.

Section 1803(b)(4) provides that a local government shall not receive a subgrant of more than 100 percent of its juvenile justice expenditures.

Section 1803(c) requires the State to investigate the methodology used by a locality to determine the accuracy of the locality's submitted data, if the State has reason to believe such information is insufficient or inaccurate.

Section 1803(d) provides that States shall expend money on services to localities whose allotments are less than $10,000.

Section 1803(e) provides that the Attorney General will reserve not more than 75 percent of the allocation that a non-qualifying State would have received under section 1803(a) if it had qualified. This reserve will be used to provide grants to localities that meet the requirements for funding under section 1802 even though they are in the non-qualifying States.

QUOTED SECTION 1804: GUIDELINES

Section 1804(a) requires the Attorney General to issue guidelines establishing procedures under which a State or locality that receives funds is required to provide notice regarding the proposed use of funds made available under this part.

Section 1804(b) requires an eligible State or locality to establish an advisory board to review the proposed uses of such funds. The members of the board must include representatives of: State and local police departments, prosecutors' offices, juvenile courts, probation offices, educational agencies, and social service agencies; the local sheriff's departments; nonprofit, nongovernmental victim advocacy organizations; and nonprofit, religious or community groups.

QUOTED SECTION 1805: PAYMENT REQUIREMENTS

This section establishes various provisions regarding payment of funds to eligible States and localities and repayment of unexpended funds to the Attorney General. Grant recipients may use no more than 5 percent of any grant funds received for administrative costs.

QUOTED SECTION 1806: UTILIZATION OF THE PRIVATE SECTOR

This section provides that States or localities may use the funds to contract with private, nonprofit entities or community-based organizations to carry out the purposes of section 1801.

QUOTED SECTION 1807: ADMINISTRATIVE PROVISIONS

This section establishes administrative provisions for recipient State or localities that receive funds directly from the Attorney General. The recipient of the funds must establish a trust fund and deposit all payments received under this grant program into that trust.

QUOTED SECTION 1808: ASSESSMENT REPORTS

This section requires that a State or locality that receives the grant or subgrant funding must provide a report to the Attorney General summarizing the activities carried out with the funds and assessing the effectiveness of those activities. This section also includes a waiver provision for activities that are not practical to assess.

QUOTED SECTION 1809: DEFINITIONS

This section provides definitions of key terms used in the legislation.

QUOTED SECTION 1810: AUTHORIZATION OF APPROPRIATIONS

This section authorizes $350 million a year for through fiscal year 2005 to fund the programs under this title.

Subtitle B—Juvenile Justice and Delinquency Prevention Act of 2002

*Section 12201. Short title*

Section 12201 states that this subtitle may be cited as the ''Juvenile Justice and Delinquency Prevention Act of 2002.''

*Section 12202. Findings*

Section 12202 states the findings of Congress on the seriousness of juvenile crime and the need to address the problem through both prevention and accountability programs.

*Section 12203. Purpose*

Section 12203 states that the purpose of this subtitle is to assist State and local governments in preventing acts of juvenile delinquency and holding offenders accountable.

*Section 12204. Definitions*

Section 12204 modifies and adds to the definitions under the Juvenile Justice and Delinquency Act. It defines ''graduated sanctions,'' ''contact,'' ''adult inmate,'' ''violent crime,'' ''collocated facilities,'' and ''related complex of buildings.'' The definition for ''contact'' adopts current Federal regulations, as found in section 31.303 of Title 28 of the Code of Federal Regulations.

*Section 12205. Concentration of Federal effort*

Section 12205 modifies the duties of the Administrator of the Office of Juvenile Justice and Delinquency Prevention by, among other things, requiring him to issue model standards for providing mental health care to incarcerated juveniles within one year of enactment.

*Section 12206. Coordinating Council on Juvenile Justice and Delinquency Prevention*

Section 12206 makes a technical correction to the JJDPA, making it comply with the current title of the House Education and Workforce Committee.

*Section 12207. Annual report*

Section 12207 amends section 207 of the JJDPA to require an annual evaluation of the effectiveness of programs funded under this title.

*Section 12208. Allocation*

Section 12208 amends section 222 of the JJDPA to make technical changes to clarify the process by which States and territories receive funding under the Act.

*Section 12209. State plans*

Section 12209 amends section 223 of the JJDPA to amend or eliminate specific state plan requirements and modify the list of activities eligible for funding under the formula grant program.

*Section 12210. Juvenile Delinquency Prevention Block Grant Program*

Section 12210 amends Title II of the JJDPA by repealing Part C (National Programs), Part D (Gangs), Part E (State Challenge Activities), Part F (Treatment of Juvenile Offenders Who Are Victims of Child Abuse or Neglect), Part G (Mentoring), Part H (Boot Camps), and the first sub-part of Part I (White House Conference on Juvenile Justice). In their place, the section creates a new Part C that establishes the Juvenile Delinquency Prevention Block Grant and sets forth the allocation of funds, state plan requirements and criteria and eligibility for grants for local projects.

*Section 12211. Research; evaluation; technical assistance; training*

Section 12211 amends Title II of the JJDPA by creating a new Part D that authorizes research, training, technical assistance and information dissemination regarding juvenile justice matters through the Office of Juvenile Justice and Delinquency Prevention.

*Section 12212. Demonstration projects*

Section 12212 amends Title II of the JJDPA by creating a new Part E that permits the administrator to award grants for developing, testing, and demonstrating new initiatives and programs for the prevention, control or reduction of juvenile delinquency.

*Section 12213. Authorization of appropriations*

Section 12213 authorizes such sums as may be appropriate to carry out Title II of this act.

*Section 12214. Administrative authority*

Section 12214 amends Section 299A of the JJDPA to modify the administrator's authority to establish rules, regulations, and procedures.

*Section 12215. Use of funds*

Section 12215 amends Section 299C of the JJDPA to state, among other things, that no funds shall be paid to a residential program unless the State in which it is located has minimum licensing standards.

*Section 12216. Limitations on use of funds*

Section 12216 amends Title II, Part F of the JJDPA by adding a requirement that funds not be used to support the unsecured release of juveniles charged with a violent crime.

*Section 12217. Rules of construction*

Section 12217 amends Title II, Part F of the JJDPA by adding a new section to clarify that nothing in Titles I or II (a) prevents otherwise eligible organizations from receiving grants, or (b) should be construed to modify or affect existing federal or state laws related to collective bargaining rights of employees.

*Section 12218. Leasing surplus Federal property*

Section 12218 amends Title II, Part F of the JJDPA to permit the administrator to receive surplus Federal property and lease it to eligible entities for use in juvenile facilities or for delinquency prevention and treatment activities.

*Section 12219. Issuance of rules*

Section 12219 amends Title II, Part F of the JJDPA to allow the administrator to issue rules to carry out the title.

*Section 12220. Content of materials*

Section 12220 amends Title II, Part F of the JJDPA to add a new section requiring that materials funded by this act for the purpose of hate crimes prevention shall not abridge or infringe upon the constitutionally protected rights of free speech, religion, and equal protection of juveniles or their parents or legal guardians.

*Section 12221. Technical and conforming amendments*

Section 12221 sets forth technical and conforming amendments.

*Section 12222. Incentive grants for local delinquency prevention programs*

Section 12222 reauthorizes Title V of the JJDPA, which provides for grants for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, with minor amendments.

*Section 12223. Effective date; application of amendments*

Section 12223 sets forth the effective date of the act and states that amendments made by the act shall apply to fiscal years beginning after September 30, 2002.

Subtitle C—Amendments to 18 U.S.C. 5037

*Section 12301. Amendments to 18 U.S.C. 5037*

Section 12301 amends 18 U.S.C. §5037 to modify current federal law regarding the sentencing of juvenile delinquents. Specifically, it (1) provides authority to impose a term of juvenile delinquency supervision to follow a term of official detention, (2) provides authority to sanction a violation of probation when a person adjudicated a juvenile delinquent is over 21 at the time of the violation, and (3) makes technical corrections in response to the Supreme Court's decision in *United States* v. *R.L.C.*

TITLE III—INTELLECTUAL PROPERTY

Subtitle A—Patent and Trademark Office Authorization

*Sec. 13101. Short Title*

Section 13101 states that the short title of this subtitle is the ''Patent and Trademark Authorization Act of 2002.''

*Sec. 13102. Authorization of amounts available to the Patent and Trademark Office*

Section 13102 would authorize the PTO to receive appropriations for fiscal years 2003 through 2008 in amounts equal to those fees collected by the agency in each such fiscal year. The Director of the PTO must submit estimates of the fees for the next fiscal year to the Committees on Appropriations and Judiciary of the Senate and the Committees on Appropriations and Judiciary of the House of Representatives no later than February 15 each fiscal year. If enacted, however, this full-funding authorization would still be subject to appropriations.

*Sec. 13103. Electronic filing and processing of patent and trademark applications*

Section 13103 requires the Director to develop a user-friendly electronic system for the filing and processing patent and trademark applications. This electronic system must also allow examiners and applicants to send all communications electronically, and should allow the PTO to process, maintain, and search electronically the contents and history of each application. The system must be completed within 3 years of the date of enactment of this legislation. This section authorizes not more than $50,000,000 for each of fiscal years 2003, 2004 and 2005 to carry out this section. These amounts will remain available until expended.

*Sec. 13104. Strategic Plan*

Section 13104 requires the Secretary of Commerce to submit annual updates on the implementation of the ''21st Century Strategic Plan'', which was issued on June 3, 2002, and any amendments to that plan. These annual reports should be submitted to Committees on the Judiciary of the Senate and House of Representatives in the five calendar years following the date of enactment of this act.

*Sec. 13105. Determination of substantial new question of patentability in reexamination proceedings*

Section 13105 modifies the sections of Title 35 of the U.S. Code that instruct the Director to determine whether substantial new questions of patentability are raised by requests for prior art citations to the Office, *ex parte* reexaminations of patents, or *inter partes* reexaminations of patents. In each of these cases, language is added to the Title to clarify that the existence of a substantial new question of patentability is not necessarily precluded by the fact that a patent or printed publication has been previously cited by the Office or considered by the Office. This section states that these amendments to the U.S. Code will be effective for any determinations made by the Director on or after the enactment of this bill.

*Sec. 13106. Appeals in inter partes* reexamination proceedings

Section 13106 amends 35 U.S.C. Sec. 315 by adding the Court of Appeals for the Federal Circuit as a venue where a third party requester may appeal, or be a party to an appeal of, a final decision on patentability.

This section strikes the section in the Code that states that the third-party requester may not appeal the decision of the Board of Patent Appeals and Interferences. It explicitly adds third-party requesters to those who may request an appeal or participate in an appeal of a decision by the Board of Patent Appeals and Interferences. It also states that all of the amendments found in this section apply to any reexamination begun on or after the date of enactment of this bill.

Subtitle—B Intellectual Property and High Technology Technical Amendments

*Sec. 13201. Short title*

Section 13201 may be cited as the ''Intellectual Property and High Technology Technical Amendments Act of 2002.''

*Sec. 13202. Clarification of Reexamination Procedure Act of 1999; technical amendments*

Reexamination is an administrative proceeding in which a patent may be reviewed in light of new evidence affecting its patentability (''prior art'').[6] Traditionally, reexamination operated only between the patent owner and the PTO (*ex parte*). As part of the AIPA, a new *inter partes* reexamination procedure was established to allow a third party also to challenge the validity of a patent or its claims through the introduction of new evidence. While this *inter partes* procedure is considered beneficial because it provides cost savings over court litigation, some critics were concerned it would be abused. As a result, reexamination through the *inter partes* mechanism was designed with certain limitations (e.g., estoppel provisions) which do not apply in *ex parte* reexamination under the Patent Act.

Section 13202 of the bill merely clarifies the Patent Act's *inter partes* reexamination section by stipulating that it will apply to the proper parties and operate as envisioned. For example, the term ''third-party requester'' is inserted in lieu of ''persons,'' since only a third party may invoke this *inter partes* reexamination. This is logical because a patent owner has more rights under *ex parte* reexamination and would not choose to use the *inter partes* procedures even if available.

The bill, under paragraph (c), specifies that the effective date of these reexamination procedures shall apply to any reexamination on or after the date of the act's enactment.

*Sec. 13203. Patent and Trademark Efficiency Act amendments*

The AIPA contained a title (the ''Patent and Trademark Efficiency Act'') to modernize the PTO by transforming it into a more autonomous and efficient agency. The first section of the bill clarifies the status and authority of the Deputy Director of the PTO under this reorganization. The amendments made by the succeeding two paragraphs also conform the membership of the Trademark Trial and Appeal Board and the Board of Patent Appeals and Interferences to include the Deputy Director, as under current statute.

Section 13203 amends section 5, chapter 1, of title 35. The employees of the PTO are currently prohibited from having an ownership interest in patents.[7] Members of the newly-established Public Advisory Committee are currently considered employees of the Office. Currently, those individuals who possess the most thorough understanding of the patent system (for example, independent inventors) are prohibited from participating on the Public Advisory Committee. This subsection eases this restriction on those serving on the Public Advisory Committee in light of the goals of the AIPA.

This section eliminates the need for a signature to be attested on a patent grant. This amendment removes one step of the agency's bureaucracy and allows the PTO to issue patents more expeditiously.

*Sec. 13204. Domestic publication of Foreign Filed Patent Applications Act of 1999 amendments*

The AIPA established the early publication of patent applications in the U.S. patent system for the first time along with certain conditions and new rights for inventors. One such right is a corresponding provisional right (e.g., a reasonable royalty) in patent infringement cases. These provisions will take effect 1 year after the AIPA's date of enactment. Section 13204 is technical in nature and clarifies the text regarding the statutory requirement for the effective date of international applications which may qualify for the provisional rights based on early publication.

*Sec. 13205. Domestic Publication of Patent Applications Published Abroad*

The AIPA established the early publication of patent applications, as described above. One consequence of early publication is its effect on the standard of novelty for a patent application. Section 13205 and the following paragraphs establish certain safeguards regarding the interplay of the early publication of patent applications and the review of novelty during the patent examination process. It is an especially important safeguard in light of the fact that the U.S. is a signatory of the Patent Cooperation Treaty, an international convention allowing for the multi-national application of patents in several languages.

Subsection 1 contains a safeguard that the PTO will only rely on information published in English in patent applications as it makes the essential determination of novelty during the examination of a patent application. This limits the evidence from foreign applications that may be considered ''prior art'' and could affect patentability. This is an important safeguard for independent inventors and small American businesses that do not have access to expensive translation services and the foreign patent offices.

The effective date language relating to section 102(e) generally provides that all patents, whenever granted, and all pending applications for patents, whenever filed, will be subject to prior art as defined by section 102(e) of title 35 effective as of November 29, 2000. However, patents resulting from an international application filed before November 29, 2000 and applications published under section 122(b) of title 35 or Article 21(2) of the treaty defined in section 351(a) of title 35 resulting from an international application filed before November 29, 2000 will not be effective as prior art references as of the filing date of the international application. This exception includes patents and published applications derived directly or indirectly from international applications filed before November 29, 2000, including international applications that claim benefit to an earlier application for patent in the United States. Thus, for example, if an application for patent, filed before, on, or after November 29, 2000, claims the benefit to an international application filed before November 29, 2000, and the international application, in turn, claims the benefit to earlier filed United States application for patent, neither the filing date of the international application nor the filing date of the earlier-filed application for patent in the United States will be considered in determining when the resulting published application or patent is effective as a prior art reference under section 102(e) of title 35 effective on November 29, 2000. However, under section 102(e) of title 35 as amended by the AIPA, for patents and published applications derived indirectly from an international application filed before November 29, 2000 through a bypass continuation application (an application for patent filed under section 111 of title 35 that claims the benefit of the filing date of an earlier international application that did not enter the national stage under section 371 of title 35), such patents and published applications are effective as prior art references as of the filing date of the bypass continuation application.

This section also clarifies that a patent or pending application for patent will be subject to prior art patents resulting from international applications filed before November 29, 2000 based on the provisions of section 102(e) of title 35 in effect before November 29, 2000. Thus, such patents may be prior art references as of the date of compliance with the requirements of section 371 (c) (1), (2), and (4) of title 35 and not the filing date of the international application, unless the date of compliance with the requirements of section 371(c)(1), (2), and (4) of title 35 coincides with the filing date of the international application.

*Sec. 13206. Miscellaneous clerical amendments*

Section 13206 contains a series of highly technical clerical amendments developed by the Office of Legislative Counsel upon its own initiative. These changes to the Patent Act are self-evident, and range from aligning paragraphs, deleting quotation marks, correcting the fonts of headings, and the like.

*Sec. 13207. Technical corrections in trademark law*

In Section 13207, the first paragraph clarifies the statutory text of the Trademark Act as it relates to damages. In 1999, the ''Anti-Cybersquatting Consumer Protection Act''[8] established certain damages for willful violation of §43(c) of the Trademark Act.[9] The present language entitles a plaintiff to damages, but it reads awkwardly. This bill makes a technical correction to the text and thereby removes the redundant text, without altering the substance of available trademark infringement remedies.

The second paragraph provides for additional technical amendments, including four strictly clerical changes, such as the deletion of a comma and the realignment of a paragraph. The bill also makes additional changes to the Trademark Act regarding the designation of persons involved with the filing procedures for receiving notice and process correspondence relating to the trademark registration.

*Sec. 13208. Patent and trademark fee clerical amendment*

Section 13208 corrects a clerical error pertaining to the section of the law cited relating to the adjustment of trademark fees and the consumer price index. The change to the cited reference does not make a substantive change in trademark law.

*Sec. 13209. Copyright related corrections to 1999 Omnibus Reform Act*

Section 13209 makes amendments to Title I of IPCORA.

Paragraph (1)(A) amends section 1007(2) by striking ''paragraph (2)'' and inserting ''paragraph (2)(A)''.

Paragraph (1)(B) amends section 1007(3) by striking ''1005(e)'' and inserting ''1005(d)''. In section 1007(3), the amendment instructions require paragraph 12 to be added to subsection 119(a) ''as amended by section 1005(e)''. The reference to section 1005(e) is wrong. Section 1005(d) amended subsection 119(a), whereas section 1005(e) amended subsection 119(d). Section 1005(d) amended subsection 119(a) by adding paragraph 11. Section 1005(e) amended subsection 119(d) by rewriting its paragraph 11. This amendment corrects this.

Paragraph (2) amends section 1006(b) by striking ''119(b)(1)(B)(iii)'' and inserting ''119(b)(1)(B)(ii)''. Section 1006(b) amended section 119(b)(1)(B)(iii) by inserting ''or the Public Broadcasting Service satellite feed'' after ''network station''. Section 119(b)(1)(B)(ii), not (iii), should have been amended. Section 119(b)(1)(B)(iii) contains no reference to ''network station''. Section 119(b)(1)(B)(ii) does contain that reference, and it is clear that section 1006(b) was intended to amend section 119(b)(1)(B)(ii).

[6] 35 U.S.C. §301 et seq.

[7] 35 U.S.C. §4.

[8] H.R. 3194, P.L. 106–113 (Nov. 29, 1999)

[9] 15 U.S.C. §1125(c)

Paragraphs (3)(A) and (3)(B) amend section 1006(a)(2) by repealing it, redesignating the paragraphs and changing the language in section 1011(b). The amendment in section 1006(b)(2) amends section 119(a)(1) by inserting new wording so that the text will read as follows, with the new wording italicized: ''primary transmission made by a superstation or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work''.

The amendment in section 1011(b)(2)(A) subsequently amends the same language but does not take the first amendment into account. It directs that section 119(a)(1) be amended to delete ''primary transmission made by a superstation and embodying a performance or display of a work'' (ignoring the fact that ''or by the Public Broadcasting Service satellite feed'' has been inserted into the middle of that phrase). In lieu of that phrase, it inserts ''performance or display of a work embodied in a primary transmission made by a superstation'' (but without taking into account the addition of ''or by the Public Broadcasting Service satellite feed''). As a result, it is unclear what is to be done with the phrase ''or by the Public Broadcasting Service satellite feed''. Although the intent is clear, the language of sections 1006(a)(2) and 1011(b)(2)(A) does not necessarily accomplish the intended result. These paragraphs clarify the ambiguity and achieve the intended result.

*Sec. 13210. Amendments to title 17, United States Code*

Section 13210 makes amendments to title 17, United States Code.

Paragraph (1) amends section 119(a)(6) by striking ''of performance'' and inserting ''of a performance''. Section 1011(b)(2) of IPCORA amended section 119(a)(6) so that ''performance or display of a work embodied in'' is inserted after ''by a satellite carrier of''. The word ''a'' is missing between these two phrases. This section inserts it before ''performance'' so that the language will read ''by a satellite carrier of a performance or display of a work embodied in''.

Paragraph (2)(A) amends the section heading for section 122 by striking ''rights; secondary'' and inserting ''rights: Secondary''. Section 1002(a) of IPCORA added section 122 to title 17. The title of section 122 has editorial errors. To make it consistent with the style used throughout title 17, the title is changed to substitute a colon in lieu of the semicolon and ''secondary'' is capitalized. Paragraph (2)(B) amends the item relating to section 122 in the table of contents for chapter 1 to make it consistent with the change made by paragraph (2)(A).

Paragraph (3)(A) amends the section heading for section 121 by striking ''reproduction'' and inserting ''Reproduction''. Paragraph 3(B) amends the item relating to section 121 in the table of contents for chapter 1 by striking ''reproduction'' and inserting ''Reproduction''. This makes the heading for section 121 and the table of contents for chapter 1 conform to the editorial style used for the rest of the headings for title 17 by capitalizing ''reproduction''.

Paragraphs (4)(A), (4)(B), and (4)(C) amend cross references to the limitations on exclusive rights in copyright to include section 122. Throughout title 17, such references to ''121'' are changed to ''122''. Paragraph 4(A) amends section 106 by striking ''107 through 121'' and inserting ''107 through 122''. Paragraph (4)(B) amends section 501(a) by striking ''106 through 121'' and inserting ''106 through 122''. Paragraph (4)(C) amends section 511(a) by striking ''106 through 121'' and inserting ''106 through 122''.

Paragraph (5)(A) amends section 101 by moving the definition of ''computer program'' so that it appears after the definition of ''compilation''. Paragraph (5)(B) amends section 101 by moving the definition of ''registration'' so that it appears after the definition of ''publicly''. This amendment ensures that the definitions appear in alphabetical order.

Paragraph (6) amends section 110(4)(B) in the matter preceding clause (i) by striking ''conditions;'' and inserting ''conditions:''. A colon is the proper punctuation when a phrase that introduces multiple subparts is worded to include ''the following''.

Paragraph (7) amends section 118(b)(1) in the second sentence by striking ''to it''. This section was amended by the Copyright Royalty Tribunal Reform Act of 1993 to substitute ''Librarian of Congress'' for references to the ''Copyright Royalty Tribunal'' (CRT). As originally enacted by the Copyright Act of 1976, the second sentence in subsection(b) used the pronoun ''it'' to refer to the CRT. As amended in 1993, the sentence now states, ''The Librarian of Congress shall proceed on the basis of the proposals submitted to it. . . .'' This amendment corrects that reference.

Paragraphs (8)(A) and (B) amend section 119(b)(1)(A). Paragraph (A) strikes ''transmitted'' and inserts ''retransmitted''. Paragraph (B) strikes ''transmissions'' and inserts ''retransmissions''. These paragraphs correct two drafting errors in section 119(b)(1)(A) when it was enacted by the Satellite Home Viewer Act of 1988.

Paragraphs (9)(A), (B) and (C) amend section 203(a)(2). Paragraph (9)(A)(i) amends subparagraph (A) by striking ''(A) the'' and inserts ''(A) The''. Paragraph (9)(A)(ii) amends subparagraph (A) by striking the semicolon at the end and inserting a period. Paragraph (9)(B)(i) amends subparagraph (B) by striking ''(B) the'' and inserting ''(B) The''. Paragraph (9)(B)(ii) amends subparagraph (B) by striking the semicolon at the end and inserting a period. Paragraph (9)(C) amends subparagraph (C) by striking ''(C) the'' and inserting ''(C) The''.

Paragraphs (10)(A), (B) and (C) amend section 304(c)(2). Paragraph (10)(A)(i) amends subparagraph (A) by striking ''(A) the'' and inserting ''(A) The''. Paragraph (10)(A)(ii) amends subparagraph (A) by striking the semicolon at the end and inserting a period. Paragraph (10)(B)(i) amends subparagraph (B) by striking ''(B) the'' and inserting ''(B) The''. Paragraph (10)(B)(ii) amends subparagraph (B) by striking the semicolon at the end and inserting a period. Paragraph (10)(C) amends subparagraph (C) by striking ''(C) the'' and inserting ''(C) The''. The addition of subparagraph (C) to sections 203(a)(2) and 304(c)(2) resulted in inconsistent punctuation and this amendment makes the punctuation in sections 203(a)(2) and 304(c)(2) internally consistent.

Paragraph (11) amends the item relating to section 903 in the table of contents for chapter 9 by striking ''licensure'' and inserting ''licensing''. As originally enacted in 1984, the table of contents for chapter 9 and the text each had a different heading for section 903. The heading in the text was the same as it is now, which is ''Ownership, transfer, licensing, and recordation''. The heading in the table of contents was, ''Ownership and transfer.'' In 1997, a technical amendment changed the heading in the table of sections to its present form, which is, ''Ownership, transfer, licensure, and recordation.'' The 1997 amendment did not change the heading in the text to make it the same. This amendment makes both the table of contents and the heading in the text the same.

Paragraph (12) amends section 109 by striking subsection (e). Section 803 of the Computer Software Rental Amendments Act of 1990 amended section 109 of title 17 by adding subsection (e). According to section 804(c) the amendments made by section 803 shall not apply to public performances or displays that occur on or after October 1, 1995. Therefore, section 109 is expired.

*Sec. 13211. Other copyright related technical amendments.*

Section 13211 makes other technical and conforming amendments. Paragraph (a) amends title 18, section 2319(e)(2) by striking ''107 through 120'' and inserting ''107 through 122''. Paragraph (b)(1) and (2) correct an incorrect reference to an uncodified title. It is incorrect to directly cite to an uncodified title.

Subtitle C—Educational Use Copyright Exemption

*Sec. 13301. Educational use copyright exemption*

Subsection (a) provides that this provision may be cited as the ''Technology, Education and Copyright Harmonization Act of 2002.''

*Subsection (b): Exemption of certain performances and displays for educational uses*

Section 1(b) of the TEACH Act amends section 110(2) of the Copyright Act to encompass performances and displays of copyrighted works in digital distance education under appropriate circumstances. The section expands the scope of works to which the amended section 110(2) exemption applies to include performances of reasonable and limited portions of works other than nondramatic literary and musical works (which are currently covered by the exemption), while also limiting the amount of any work that may be displayed under the exemption to what is typically displayed in the course of a live classroom session. At the same time, section 1(b) removes the concept of the physical classroom, while maintaining and clarifying the requirement of mediated instructional activity and limiting the availability of the exemption to mediated instructional activities of governmental bodies and ''accredited'' non-profit educational institutions. This section of the Act also limits the amended exemption to exclude performances and displays given by means of a copy or phonorecord that is not lawfully made and acquired, which the transmitting body or institution knew or had reason to believe was not lawfully made and acquired. In addition, section 1(b) requires the transmitting institution to apply certain technological protection measures to protect against retention of the work and further downstream dissemination. The section also clarifies that participants in authorized digital distance education transmissions will not be liable for any infringement by reason of transient or temporary reproductions that may occur through the automatic technical process of a digital transmission for the purpose of a performance or display permitted under the section. Obviously, with respect to such reproductions, the distribution right would not be infringed. Throughout the Act, the term ''transmission'' is intended to include transmissions by digital, as well as analog means.

*Works subject to the exemption and applicable portions*

The TEACH Act expands the scope of the section 110(2) exemption to apply to performances and displays of all categories of copyrighted works, subject to specific exclusions for works ''produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks'' and performance or displays ''given by means of a copy or phonorecord that is not lawfully made and acquired,'' which the transmitting body or institution ''knew or had reason to believe was not lawfully made and acquired.''

Unlike the current section 110(2), which applies only to public performances of non-dramatic literary or musical works, the amendment would apply to public performances of any type of work, subject to certain exclusions set forth in section 110(2), as amended. The performance of works other than non-dramatic literary or musical works is limited, however, to ''reasonable and limited portions'' of less than the entire work. What constitutes a ''reasonable and limited'' portion should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance.

In addition, because ''display'' of certain types of works, such as literary works using an ''e-book'' reader, could substitute for traditional purchases of the work (e.g., a text book), the display exemption is limited to ''an amount comparable to that which is typically displayed in the course of a live classroom setting.'' This limitation is a further implementation of the ''mediated instructional activity'' concept described below, and recognizes that a ''display'' may have a different meaning and impact in the digital environment than in the analog environment to which section 110(2) has previously applied. The ''limited portion'' formulation used in conjunction with the performance right exemption is not used in connection with the display right exemption, because, for certain works, display of the entire work could be appropriate and consistent with displays typically made in a live classroom setting (e.g., short poems or essays, or images of pictorial, graphic, or sculptural works, etc.).

The exclusion for works ''produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks'' is intended to prevent the exemption from undermining the primary market for (and, therefore, impairing the incentive to create, modify or distribute) those materials whose primary market would otherwise fall within the scope of the exemption. The concept of ''performance or display as part of mediated instructional activities'' is discussed in greater detail below, in connection with the scope of the exemption. It is intended to have the same meaning and application here, so that works produced or marketed primarily for activities covered by the exemption would be excluded from the exemption. The exclusion is not intended to apply generally to all educational materials or to all materials having educational value. The exclusion is limited to materials whose primary market is ''mediated instructional activities,'' *i.e.*, materials performed or displayed as an integral part of the class experience, analogous to the type of performance or display that would take place in a live classroom setting. At the same time, the reference to ''digital networks'' is intended to limit the exclusion to materials whose primary market is the digital network environment, not instructional materials developed and marketed for use in the physical classroom.

The exclusion of performances or displays ''given by means of a copy or phonorecord that is not lawfully made and acquired'' under Title 17 is based on a similar exclusion in the current language of section 110(1) for the performance or display of an audiovisual work in the classroom. Unlike the provision in section 110(1), the exclusion here applies to the performance or display of any work. But, as in section 110(1), the exclusion applies only where the transmitting body or institution ''knew or had reason to believe'' that the copy or phonorecord was not lawfully made and acquired. As noted in the Register's Report, the purpose of the exclusion is to reduce the likelihood that an exemption intended to cover only the equivalent of traditional concepts of performance and display would result in the proliferation or exploitation of unauthorized copies.[10] An educator would typically purchase, license, rent, make a fair-use copy, or otherwise lawfully acquire the copy to be used, and works not yet made available in the market (whether by distribution, performance or display) would, as a practical matter, be rendered ineligible for use under the exemption.

*Eligible transmitting entities*

As under the current section 110(2), the exemption, as amended, is limited to government bodies and non-profit educational institutions. However, due to the fact that, as the Register's Report points out, ''nonprofit educational institutions'' are no longer a closed and familiar group, and the ease with which anyone can transmit educational material over the Internet, the amendment would require non-profit educational institutions to be ''accredited'' in order to provide further assurances that the institution is a bona fide educational institution. It is not otherwise intended to alter the eligibility criteria. Nor is it intended to limit or affect any other provision of the Copyright Act that relates to non-profit educational institutions or to imply that non-accredited educational institutions are necessarily not bona fide.

''Accreditation'' is defined in section 1(b)(2) of the TEACH Act in terms of the qualification of the educational institution. It is not defined in terms of particular courses or programs. Thus, an accredited nonprofit educational institution qualifies for the exemption with respect to its courses whether or not the courses are part of a degree or certificate-granting program.

*Qualifying performances and displays; mediated instructional activities*

Subparagraph (2)(A) of the amended exemption provides that the exemption applies to a performance or display made ''by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of . . . systematic mediated instructional activity.'' The subparagraph includes several requirements, all of which are intended to make clear that the transmission must be part of mediated instructional activity. First, the performance or display must be made by, under the direction of, or under the actual supervision of an instructor. The performance or display may be initiated by the instructor. It may also be initiated by a person enrolled in the class as long as it is done either at the direction, or under the actual supervision, of the instructor. ''Actual'' supervision is intended to require that the instructor is, in fact, supervising the class activities, and that supervision is not in name or theory only. It is not intended to require either constant, real-time supervision by the instructor or pre-approval by the instructor for the performance or display. Asynchronous learning, at the pace of the student, is a significant and beneficial characteristic of digital distance education, and the concept of control and supervision is not intended to limit the qualification of such asynchronous activities for this exemption.

The performance or display must also be made as an ''integral part'' of a class session, so it must be part of a class itself, rather than ancillary to it. Further, it must fall within the concept of ''mediated instructional activities'' as described in section 1(b)(2) of the TEACH Act. This latter concept is intended to require the performance or display to be analogous to the type of performance or display that would take place in a live classroom setting. Thus, although it is possible to display an entire textbook or extensive course-pack material through an e-book reader or similar device or computer application, this type of use of such materials as supplemental reading would not be analogous to the type of display that would take place in the classroom, and therefore would not be authorized under the exemption.

The amended exemption is not intended to address other uses of copyrighted works in the course of digital distance education, including student use of supplemental or research materials in digital form, such as electronic course packs, e-reserves, and digital library resources. Such activities do not involve uses analogous to the performances and displays currently addressed in section 110(2).

The ''mediated instructional activity'' requirement is thus intended to prevent the exemption provided by the TEACH Act from displacing textbooks, course packs or other material in any media, copies or phonorecords of which are typically purchased or acquired by students for their independent use and retention ''in most post-secondary and some elementary and secondary contexts). The Committee notes that in many secondary and elementary school contexts, such copies of such materials are not purchased or acquired directly by the students, but rather are provided for the students'' independent use and possession (for the duration of the course) by the institution.

The limitation of the exemption to systematic ''mediated instructional activities'' in subparagraph (2)(A) of the amended exemption operates together with the exclusion in the opening clause of section 110(2) for works ''produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks'' to place boundaries on the exemption. The former relates to the nature of the exempt activity; the latter limits the relevant materials by excluding those primarily produced or marketed for the exempt activity.

One example of the interaction of the two provisions is the application of the exemption to textbooks. Pursuant to subparagraph (2)(A), which limits the exemption to ''mediated instructional activities,'' the display of material from a textbook that would typically be purchased by students in the local classroom environment, in lieu of purchase by the students, would not fall within the exemption. Conversely, because textbooks typically are not primarily produced or marketed for performance or display in a manner analogous to performances or display in the live classroom setting, they would not per se be excluded from the exemption under the exclusion in the opening clause. Thus, an instructor would not be precluded from using a chart or table or other short excerpt from a textbook different from the one assigned for the course, or from emphasizing such an excerpt from the assigned textbook that had been purchased by the students.

The requirement of subparagraph (2)(B), that the performance or display must be directly related and of material assistance to the teaching content of the transmission, is found in current law, and has been retained in its current form. As noted in the Register's Report[11], this test of relevance and materiality connects the copyrighted work to the curriculum, and it means that the portion performed or displayed may not be

[10] Register of Copyrights, report on copyright and digital distance education (1999) at 159.

[11] *Id.* at 80.

performed or displayed for the mere entertainment of the students, or as unrelated background material.

*Limitations on receipt of transmissions*

Unlike current section 110(2), the TEACH Act amendment removes the requirement that transmissions be received in classrooms or similar places devoted to instruction unless the recipient is an officer or employee of a governmental body or is prevented by disability or special circumstances from attending a classroom or similar place of instruction. One of the great potential benefits of digital distance education is its ability to reach beyond the physical classroom, to provide quality educational experiences to all students of all income levels, in cities and rural settings, in schools and on campuses, in the workplace, at home, and at times selected by students to meet their needs.

In its place, the Act substitutes the requirements in subparagraph (2)(C) that the transmission be made solely for and, to the extent technologically feasible, the reception be limited to students officially enrolled in the course for which the transmission is made or governmental employees as part of their official duties or employment. This requirement is not intended to impose a general requirement of network security. Rather, it is intended to require only that the students or employees authorized to be recipients of the transmission should be identified, and the transmission should be technologically limited to such identified authorized recipients through systems such as password access or other similar measures.

*Additional safeguards to counteract new risks*

The digital transmission of works to students poses greater risks to copyright owners than transmissions through analog broadcasts. Digital technologies make possible the creation of multiple copies, and their rapid and widespread dissemination around the world. Accordingly, the TEACH Act includes several safeguards not currently present in section 110(2).

First, a transmitting body or institution seeking to invoke the exemption is required to institute policies regarding copyright and to provide information to faculty, students, and relevant staff members that accurately describe and promote compliance with copyright law. Further, the transmitting organization must provide notice to recipients that materials used in connection with the course may be subject to copyright protection. These requirements are intended to promote an environment of compliance with the law, inform recipients of their responsibilities under copyright law, and decrease the likelihood of unintentional and uninformed acts of infringement.

Second, in the case of a digital transmission, the transmitting body or institution is required to apply technological measures to prevent (i) retention of the work in accessible form by recipients to which it sends the work for longer than the class session, and (ii) unauthorized further dissemination of the work in accessible form by such recipients. Measures intended to limit access to authorized recipients of transmissions from the transmitting body or institution are not addressed in this subparagraph (2)(D). Rather, they are the subjects of subparagraph (2)(C).

Third, in the case of a digital transmission, the transmitting body or institution must not ''engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination.'' As the context makes clear, this requirement refers to conduct that is taken in connection with the particular transmissions subject to the exemption, rather than to the broader activities of the transmitting body or institution generally. Further, like the other provisions under paragraph (2)(D)(ii), the requirement has no legal effect other than as a condition of eligibility for the exemption. Thus, it is not otherwise enforceable to preclude or prohibit conduct.

The requirement that technological measures be applied to limit retention for no longer than the ''class session'' refers back to the requirement that the performance be made as an ''integral part of a class session.'' The duration of a ''class session'' in asynchronous distance education would generally be that period during which a student is logged on to the server of the institution or governmental body making the display or performance, but is likely to vary with the needs of the student and with the design of the particular course. It does not mean the duration of a particular course (i.e., a semester or term), but rather is intended to describe the equivalent of an actual single face-to-face mediated class session (although it may be asynchronous and one student may remain online or retain access to the performance or display for longer than another student as needed to complete the class session). Although flexibility is necessary to accomplish the pedagogical goals of distance education, the Committee expects that a common sense construction will be applied so that a copy or phonorecord displayed or performed in the course of a distance education program would not remain in the possession of the recipient in a way that could substitute for acquisition or for uses other than use in the particular class session. Conversely, the technological protection measure in subparagraph (2)(D)(ii) refers only to retention of a copy or phonorecord in the computer of the recipient of a transmission. The material to be performed or displayed may, under the amendments made by the Act to section 112 and with certain limitations set forth therein, remain on the server of the institution or government body for the duration of its use in one or more courses, and may be accessed by a student each time the student logs on to participate in the particular class session of the course in which the display or performance is made. The reference to ''accessible form'' recognizes that certain technological protection measures that could be used to comply with subparagraph (2)(D)(ii) do not cause the destruction or prevent the making of a digital file; rather they work by encrypting the work and limiting access to the keys and the period in which such file may be accessed. On the other hand, an encrypted file would still be considered to be in ''accessible form'' if the body or institution provides the recipient with a key for use beyond the class session.

Paragraph (2)(D)(ii) provides, as a condition of eligibility for the exemption, that a transmitting body or institution apply technological measures that reasonably prevent both retention of the work in accessible form for longer than the class session and further dissemination of the work. This requirement does not impose a duty to guarantee that retention and further dissemination will never occur. Nor does it imply that there is an obligation to monitor recipient conduct. Moreover, the ''reasonably prevent'' standard should not be construed to imply perfect efficacy in stopping retention or further dissemination. The obligation to ''reasonably prevent'' contemplates an objectively reasonable standard regarding the ability of a technological protection measure to achieve its purpose. Examples of technological protection measures that exist today and would reasonably prevent retention and further dissemination, include measures used in connection with streaming to prevent the copying of streamed material, such as the Real Player ''Secret Handshake/Copy Switch'' technology discussed in *Real Networks* v. *Streambox*, 2000 WL 127311 (Jan. 18, 2000) or digital rights management systems that limit access to or use of encrypted material downloaded onto a computer. It is not the Committee's intent, by noting the existence of the foregoing, to specify the use of any particular technology to comply with subparagraph (2)(D)(ii). Other technologies will certainly evolve. Further, it is possible that, as time passes, a technological protection measure may cease to reasonably prevent retention of the work in accessible form for longer than the class session and further dissemination of the work, either due to the evolution of technology or to the widespread availability of a hack that can be readily used by the public. In those cases, a transmitting organization would be required to apply a different measure.

Nothing in section 110(2) should be construed to affect the application or interpretation of section 1201. Conversely, nothing in section 1201 should be construed to affect the application or interpretation of section 110(2).

*Transient and temporary copies*

Section 1(b)(2) of the TEACH Act implements the Register's recommendation that liability not be imposed upon those who participate in digitally transmitted performances and displays authorized under this subsection by reason of copies or phonorecords made through the automatic technical process of such transmission, or any distribution resulting therefrom. Certain modifications have been made to the Register's recommendations to accommodate instances where the recommendation was either too broad or not sufficiently broad to cover the appropriate activities.

The third paragraph added to the amended exemption under section 1(b)(2) of the TEACH Act recognizes that transmitting organizations should not be responsible for copies or phonorecords made by third parties, beyond the control of the transmitting organization. However, consistent with the Register's concern that the exemption should not be transformed into a mechanism for obtaining copies,[12] the paragraph also requires that such transient or temporary copies stored on the system or network controlled or operated by the transmitting body or institution shall not be maintained on such system or network ''in a manner ordinarily accessible to anyone other than anticipated recipients'' or ''in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions'' for which they are made.

The liability of intermediary service providers remains governed by section 512, but, subject to section 512(d) and section 512(e), section 512 will not affect the legal obligations of a transmitting body or institution when it selects material to be used in teaching a course, and determines how it will be used and to whom it will be transmitted as a provider of content.

The paragraph refers to ''transient'' and ''temporary'' copies consistent with the terminology used in section 512, including transient copies made in the transmission path by conduits and temporary copies, such as caches, made by the originating institution, by service providers or by recipients. Organizations providing digital distance education will, in many cases, provide material from source servers that create additional temporary or transient copies or phonorecords of

[12] *Id.* at 151.

the material in storage known as ''caches'' in other servers in order to facilitate the transmission. In addition, transient or temporary copies or phonorecords may occur in the transmission stream, or in the computer of the recipient of the transmission. Thus, by way of example, where content is protected by a digital rights management system, the recipient's browser may create a cache copy of an encrypted file on the recipient's hard disk, and another copy may be created in the recipient's random access memory at the time the content is perceived. The third paragraph added to the amended exemption by section 1(b)(2) of the TEACH Act is intended to make clear that those authorized to participate in digitally transmitted performances and displays as authorized under section 110(2) are not liable for infringement as a result of such copies created as part of the automatic technical process of the transmission if the requirements of that language are met. The paragraph is not intended to create any implication that such participants would be liable for copyright infringement in the absence of the paragraph.

*Subsection (c): Ephemeral recordings*

One way in which digitally transmitted distance education will expand America's educational capacity and effectiveness is through the use of asynchronous education, where students can take a class when it is convenient for them, not at a specific hour designated by the body or institution. This benefit is likely to be particularly valuable for working adults. Asynchronous education also has the benefit of proceeding at the student's own pace, and freeing the instructor from the obligation to be in the classroom or on call at all hours of the day or night.

In order for asynchronous distance education to proceed, organizations providing distance education transmissions must be able to load material that will be displayed or performed on their servers, for transmission at the request of students. The TEACH Act's amendment to section 112 makes that possible.

Under new subsection 112(f)(1), transmitting organizations authorized to transmit performances or displays under section 110(2) may load on their servers copies or phonorecords of the performance or display authorized to be transmitted under section 110(2) to be used for making such transmissions. The subsection recognizes that it often is necessary to make more than one ephemeral recording in order to efficiently carry out digital transmissions, and authorizes the making of such copies or phonorecords.

Subsection 112(f) imposes several limitations on the authorized ephemeral recordings. First, they may be retained and used solely by the government body or educational institution that made them. No further copies or phonorecords may be made from them, except for copies or phonorecords that are authorized by subsection 110(2), such as the copies that fall within the scope of the third paragraph added to the amended exemption under section 1(b)(2) of the TEACH Act. The authorized ephemeral recordings must be used solely for transmissions authorized under section 110(2).

The Register's Report notes the sensitivity of copyright owners to the digitization of works that have not been digitized by the copyright owner. As a general matter, subsection 112(f) requires the use of works that are already in digital form. However, the Committee recognizes that some works may not be available for use in distance education, either because no digital version of the work is available to the institution, or because available digital versions are subject to technological protection measures that prevent their use for the performances and displays authorized by section 110(2). In those circumstances where no digital version is available to the institution or the digital version that is available is subject to technological measures that prevent its use for distance education under the exemption, section 112(f)(2) authorizes the conversion from an analog version, but only conversion of the portion or amount of such works that are authorized to be performed or displayed under section 110(2). It should be emphasized that subsection 112(f)(2) does not provide any authorization to convert print or other analog versions of works into digital format except as permitted in section 112(f)(2).

*Relationship to fair use and contractual obligations*

As the Register's Report makes clear ''critical to [its conclusion and recommendations] is the continued availability of the fair use doctrine.''[13] Nothing in this Act is intended to limit or otherwise to alter the scope of the fair use doctrine. As the Register's Report explains:

Fair use is a critical part of the distance education landscape. Not only instructional performances and displays, but also other educational uses of works, such as the provision of supplementary materials or student downloading of course materials, will continue to be subject to the fair use doctrine. Fair use could apply as well to instructional transmissions not covered by the changes to section 110(2) recommended above. Thus, for example, the performance of more than a limited portion of a dramatic work in a distance education program might qualify as fair use in appropriate circumstances.[14]

The Register's Report also recommends that the legislative history of legislation implementing its distance education requirements make certain points about fair use. Specifically, this legislation is enacted in recognition of the following:

a. The fair use doctrine is technologically neutral and applies to activities in the digital environment; and

b. the lack of established guidelines for any particular type of use does not mean that fair use is inapplicable.[15]

While the Register's Report also examined and discussed a variety of licensing issues with respect to educational uses not covered by exemptions or fair use, these issues were not included in the Report's legislative recommendations that formed the basis for the TEACH Act. It is the view of the committee that nothing in this Act is intended to affect in any way the relationship between express copyright exemptions and license restrictions.

*Nonapplicability to secure tests*

The Conference is aware and deeply concerned about the phenomenon of school officials who are entrusted with copies of secure test forms solely for use in actual test administrations and using those forms for a completely unauthorized purpose, namely helping students to study the very questions they will be asked on the real test. The Conference does not in any way intend to change current law with respect to application of the Copyright Act or to undermine or lessen in any way the protection afforded to secure tests under the Copyright Act. Specifically, this section would not authorize a secure test acquired solely for use in an actual test administration to be used for any other purpose.

[13] Id. at xvi.

[14] Id. at 161–162.

[15] 15 Id.

*Subsection (d): PTO report*

The report requested in subsection (d) requests information about technological protection systems to protect digitized copyrighted works and prevent infringement. The report is intended for the information of Congress and shall not be construed to have any effect whatsoever on the meaning, applicability, or effect of any provision of the Copyright Act in general or the TEACH Act in particular.

Subtitle D—Madrid Protocol Implementation

*Sec. 13401. Short title*

This section provides that this subtitle may be cited as the ''Madrid Protocol Implementation Act.''

*Sec. 13402. Provisions to implement the protocol relating to the Madrid Agreement Concerning the International Registration of Marks*

This section amends the ''Trademark Act of 1946'' by adding a new ''Title XII—The Madrid Protocol,'' which contains new sections 60 through 74 with the following:

(A) The owner of a registration granted by the U.S. Patent and Trademark Office (PTO) or the owner of a pending application before the PTO may file an international application for trademark protection at the PTO.

(B) After receipt of the appropriate fee and inspection of the application, the PTO Director is charged with the duty of transmitting the application to the WIPO International Bureau.

(C) The Director is also obliged to notify the International Bureau whenever the international application has been ''restricted, abandoned, canceled, or has expired,'' within a specified time period.

(D) The holder of an international registration may request an extension of its registration by filing with the PTO or the International Bureau.

(E) The holder of an international registration is entitled to the benefits of extension in the United States to the extent necessary to give effect to any provision of the Protocol; however, an extension of an international registration shall not apply to the United States if the PTO is the office of origin with respect to that mark.

(F) The holder of an international registration with an extension of protection in the United States may claim a date of priority based on certain conditions.

(G) If the PTO Director believes that an applicant is entitled to an extension of protection, the mark will be published in the ''Official Gazette of the Patent and Trademark Office.'' This serves notice to third parties who oppose the extension. Unless an opposition and/or other court proceeding conducted pursuant to existing law is successful, the request for extension may not be refused. If the request for extension of protection is denied, however, the Director notifies the International Bureau of such action and sets forth the reason(s) why. The Director must also apprise the International Bureau of other relevant information pertaining to requests for extension of protection within designated time periods.

(H) If an extension for protection is granted, the PTO issues a certificate attesting to such action, and publishes notice of the certificate in the ''Official Gazette.'' Holders of extension certificates thereafter enjoy protection equal to that of other owners of registration listed on the Principal Register of the PTO.

(I) If the International Bureau notifies the PTO of a cancellation of some or all of the goods and services listed in the international registration, the PTO must cancel an extension of protection with respect to the same

goods and services as of the date on which the international registration was canceled. Similarly, if the International Bureau does not renew an international registration, the corresponding extension of protection in the United States shall cease to be valid. Finally, the holder of an international registration canceled in whole or in part by the International Bureau may file an application for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection in the United States based on that international registration.

(J) The holder of an extension of protection must, within designated time periods and under certain conditions, file an affidavit setting forth the relevant goods or services on or in connection with which the mark is in use in commerce and attaching a specimen or facsimile showing the current use of the mark in commerce, or setting forth that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(K) The right to an extension of protection may be assigned to a third party so long as that person is a national of, or is domiciled in, or has a ''bonafide'' and effective industrial or commercial establishment in a country that is a member of the Protocol; or has such a business in a country that is a member of an intergovernmental organization (such as the EC) belonging to the Protocol.

(L) An extension of protection conveys the same rights as an existing registration for the same mark if the extension and existing registration are owned by the same person, and extension of protection and the existing registration cover the same goods or services, and the certificate of extension is issued after the date of the existing registration.

*Sec. 13403. Effective date*

This section states that the effective date of the act shall commence on the date on which the Madrid Protocol enters into force with respect to the United States or 1 year after the date of enactment of the act, whichever occurs later.

TITLE IV—ANTITRUST TECHNICAL CORRECTIONS ACT OF 2002

*Sec. 14101. Short title*

Section 14101 provides that this title may be cited as the ''Antitrust Technical Corrections Act of 2002.''

*Sec. 14102. Amendments*

Subsection 14102(a) repeals the paragraph in Section 11 of Panama Canal Act, prohibiting ships owned by persons who are violating the antitrust laws from passing through the Canal.

Subsection 14102(b) adds a new Section 3(b) to the Sherman Act to clarify that Section 2 of the Sherman Act applies to the District of Columbia and the territories.

Subsection 14102(c) repeals Section 77 of the Wilson Tariff Act and also eliminates several cross-references to Section 77 in five other statutes (the Clayton Act, the Federal Trade Commission Act, the Packers and Stockyards Act, the Atomic Energy Act of 1954, and the Deep Seabed Hard Mineral Resources Act). These cross-references occur in definitions of the term ''antitrust laws'' in the other statutes and do not change the substance of those statutes.

Subsection 14102(d) corrects an erroneous section number designation in the Curt Flood Act passed in 1998. It makes no substantive change.

Subsection 14102(e) inserts an inadvertently omitted period in the Year 2000 Information and Readiness Disclosure Act. It makes no substantive change.

Subsection 14102(f) repeals the Act of March 3, 1913, requiring that depositions in Sherman Act equity cases brought by the government be held in public.

Subsection 14102(g) repeals section 116 of the Act of November 19, 2001.

*Section 14103. Effective date; application of amendments*

Subsection 14103(a) provides that the changes shall take effect on the date of enactment.

Subsection 14103(b) provides that the change made by subsection 14102(a) shall apply to cases pending on or after the date of enactment.

Subsection 14103(c) provides that the change made by subsections 14102(b), (c), and (d) shall apply only to cases commenced on or after the date of enactment.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY HYDE,
GEORGE W. GEKAS,
J. HOWARD COBLE,
LAMAR SMITH,
ELTON GALLEGLY,
JOHN CONYERS, Jr.,
BARNEY FRANK,
BOBBY SCOTT,
TAMMY BALDWIN,
*(Provided*, That Mr. BERMAN is appointed in lieu of Ms. BALDWIN for consideration of sec. 312 of the Senate amendment, and modifications committed to conference.)
HOWARD BERMAN

From the Committee on Energy and Commerce, for consideration of secs. 2203–6, 2206, 2210, 2801, 2901–2911, 2951, 4005, and title VIII of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on Education and the Workforce, for consideration of secs. 2207, 2301, 2302, 2311, 2321–4, 2331–4 of the Senate amendment, and modifications committed to conference:

PETER HOEKSTRA,
MICHAEL N. CASTLE,
GEORGE MILLER,
*Managers on the Part of the House.*

PATRICK LEAHY,
TED KENNEDY,
ORIN HATCH,
*Managers on the Part of the Senate.*

## CONFERENCE REPORT ON H.R. 1646, FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 2003

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 545 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 545

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 1646) to authorize appropriations for the Department of State for fiscal years 2002 and 2003, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from Florida (Mr. DIAZ-BALART) is recognized for 1 hour.

Mr. DIAZ-BALART. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN) pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

(Mr. DIAZ-BALART asked and was given permission to revise and extend his remarks.)

Mr. DIAZ-BALART. Mr. Speaker, House Resolution 545 is a rule waiving all points of order against the conference report to accompany H.R. 1646, the Foreign Relations Authorization Act for 2002 and 2003, and against its consideration.

The underlying legislation has taken on a new meaning, Mr. Speaker, this year. The United States is leading a worldwide war against terrorism. This is a very difficult task, which requires a careful combination of strength as well as diplomacy. The legislation that we will consider today supports the needs of President Bush and his administration to conduct the foreign relations of the United States while keeping our citizens abroad safe from harm.

It provides $13.8 billion in fiscal year 2003 to help achieve these goals, including $5.2 billion for counterterrorism assistance to our allies and $1.6 billion for security at our embassies abroad.

I am very pleased to see that this report includes increased authorization levelings for human rights monitoring as part of our effort in Congress to promote human rights around the world. This legislation also requires State Department officials to work to reform the United Nations Commission on Human Rights, whose membership includes some of the world's worst human rights violators.

The underlying legislation will also help promote our Nation's message of freedom and support for democracy by providing new authorities to our international broadcasting entities, with an emphasis on those countries whose governments obviously do not permit freedom of the press.

I am pleased to see a continued commitment to our friends in Israel. Every country under international law has the right to designate its capital city. In fact, however, this has not been the case with Israel. This legislation requires compliance with existing U.S. law that recognizes Jerusalem as the capital of Israel, which has been the capital of that country since 1950.

This legislation also enacts the Middle East Peace Commitments Act of 2002, which requires the President to formally determine whether the Palestinian Authority is complying with its commitments under international

agreements, including the absolute renunciation of terrorism and violence.

It is important, Mr. Speaker, we continue to support our democratic allies around the world. For example, Taiwan has demonstrated its continued commitment to a democratic path even under the constant threat just miles off its shores. The administration has shown that they have a clear understanding of Taiwan's security needs by requesting four Kidd class destroyers which this bill provides for.

Mr. Speaker, as we continue our efforts to prevent future acts of terror, it is important that we provide the administration with the necessary tools to continue to bring the world's community on board. I would like to thank the gentleman from Illinois (Mr. HYDE), the chairman, and the gentleman from California (Mr. LANTOS), the ranking member, and all the members of the Committee on International Relations for in effect making the tough decisions required to produce thoughtful legislation that meets our most important priorities in this field, the field of foreign affairs.

I urge all of my colleagues to support this straightforward rule, noncontroversial rule as well as this very important underlying legislation.

Mr. Speaker, I reserve the balance of my time.

□ 1445

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman from Florida for granting me the customary time for debate, and I yield myself such time as I may consume.

Mr. Speaker, I am very glad that the House is able to review and act on the conference report on H.R. 1646, the fiscal year 2002 and fiscal year 2003 authorizations for the Department of State; and I commend the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on International Relations, and the gentleman from California (Mr. LANTOS), his distinguished ranking member, for moving the conference process along; and I thank all the conferees for their work.

The rule providing for debate is the standard rule for a conference report. It waives all points of order against the conference report and against consideration. It provides that the conference report shall be considered as read and it allows for 1 hour of debate equally divided. As such, this rule should be supported.

This bipartisan bill has much to commend it. It authorizes $8.6 billion for the operations of the State Department and related agencies in fiscal year 2003, slightly more than the level approved in the House version of the bill. The measure's funding level includes a substantial increase for the State Department as requested by the administration.

I do want to clarify that this is not a foreign aid authorization bill which would involve the authorization of our bilateral development economic and security programs. This bill primarily authorizes funding for the State Department programs, multilateral aid administered by the State Department such as international peacekeeping funds and refugee assistance and U.S. information programs such as freedom broadcasting to the Middle East and Asia.

Most importantly, this bill authorizes $564 million for worldwide security upgrades to protect U.S. diplomatic missions and personnel abroad. It also strengthens the authority of the United States to fight terrorism as well as strengthening our commitment to Israel and peace in the Middle East, reform at the United Nations, the survival of a democratic Taiwan, the promotion of religious freedom, and protection for the victims of human trafficking.

Mr. Speaker, I am sure every Member of this body could find at least one provision in this bill that runs counter to his or her convictions about what is best for U.S. policy. For example, this bill authorizes $25.9 million for broadcasting Radio and TV Marti to Cuba. Since TV Marti reaches no one in Cuba, I find it a particulars waste of Americans' hard-earned tax dollars. There is a shocking lack of accountability in Radio Marti's professional conduct and broadcast content. Often, it broadcasts news to Cuban households many hours after such news has already been broadly reported by other sources, including sometimes even Cuban government programs such as in the case of Jimmy Carter's recent address to the Cuban people. I know that the Committee on International Relations has been looking into the lack of effectiveness of Radio and TV Marti, and I hope that this waste of U.S. taxpayer dollars will soon be remedied.

The conference report also includes a total of $5.2 billion to fund security assistance provisions, including counterterrorism and other military assistance to our allies. This section of the bill facilitates access by U.S. pilots to the Gulf Air Warfare Center in the United Arab Emirates and authorizes funding for the destruction of surplus weapon stockpiles in the former Soviet Union, Africa, and elsewhere. It also includes a new program to forgive certain Russian debts in exchange for investments in nonproliferation programs.

My colleagues will detail many of these key provisions, but I would like to take a few moments just to highlight a few. This bill serves as the vehicle for the release of funds previously appropriated for back payments of U.S. dues to the United Nations. The Omnibus Appropriations Act for fiscal year 2000 provided $926 million for U.S. back payments to the United Nations. However it conditioned the release of these funds on enactment of an authorization bill that specified U.N. agreement to certain reforms, including a decrease in the percentage of assessed U.S. contributions to the organization. These conditions were successfully negotiated by former U.S. ambassador to the United Nations Richard Holbrooke.

In May of 2001, the House passed its version of H.R. 1646 and authorized both the release of the $582 million and a third installment of $244 million. However, 2 weeks before the House considered the bill, the United States lost its seat on the U.N. Commission on Human Rights. The House responded by adopting an amendment conditioning release of the remaining installment on the return of the U.S. to the commission. Since then the United States has regained the seat. This bill, therefore, authorizes the third and final installment owed to the United Nations.

This bill also completes the process of U.N. reform under which U.S. dues to the United Nations will be reduced from 25 to 22 percent, providing American taxpayers with $2 billion in savings. In addition, this bill modestly increases the level of U.S. contributions for U.N. peacekeeping, raising it from 25 to 27 percent.

At a time when the United States is asking so much of the United Nations, it is important that we put in place the financial and legal structure that will ensure the U.S. remains a responsible and accountable leader of this singular international body.

I am also very pleased to see a number of important programs authorized in this bill. Among these is the inclusion of the Tibet Policy Act, which requires the State Department to create an office for a special coordinator for Tibetan issues. It also requires the U.S. to undertake a number of initiatives to improve the condition of human rights and religious freedom for the Tibetan people and encourage dialogue between the Chinese Government and the Dalai Lama over the future of Tibet. It also calls for the release of the 11-year-old Panchen Lam from detention by China, an act that would significantly increase confidence among the international community about China's commitment to respect the culture and religion of the Tibetan people.

The gentleman from California (Mr. LANTOS), my colleague and the ranking member, should be commended for his leadership on this issue along with our colleagues, the gentleman from New Jersey (Mr. SMITH), the gentleman from Virginia (Mr. WOLF), and the gentleman from Illinois (Mr. KIRK). This bill will also enact the East Timor Transition to Independence Act, which authorizes economic aid for East Timor and provides a framework for a strong bilateral relationship between the U.S. and the world's newest nation. I want to thank the gentleman from Illinois (Mr. HYDE), chairman, and the gentleman from California (Mr. LANTOS), ranking member, as well as the efforts of the gentleman from New Jersey (Mr. SMITH) and the gentleman from Rhode Island (Mr. KENNEDY), for their long leadership in support of freedom and human rights in East Timor.

The conference report also requires the State Department to report to Congress on the extent to which the British Government has implemented the recommendations for police reform in Northern Ireland listed in the Patten Commission's report. The establishment of a new, nonpartisan police is critical to the implementation of the Good Friday Peace Accords and bringing peace and genuine security to the people of Northern Ireland. It also emphasizes the importance of continuing the decommissioning of weapons by all Irish armed groups and the investigations of the murders of Rosemary Nelson, Patrick Finucane, and Roberts Hammill. So many of our colleagues have worked long and hard to secure a just and lasting peace in Northern Ireland, and we are all appreciative of the leadership on this provision of the gentleman from New Jersey (Mr. PAYNE), the gentleman from New Jersey (Mr. SMITH), the gentleman from Massachusetts (Mr. NEAL), the gentleman from New York (Mr. GILMAN), the gentleman from New York (Mr. CROWLEY), and the gentleman from New York (Mr. KING).

Finally, the conference report agreement also extends and strengthens authorizations provided for the Trafficking Victims Protection Act, it requires the State Department to maintain a special envoy for Sudanese issues; authorizes $5 million for a special court to try war criminals and human rights abusers in Sierra Leone; it requires annual country reports on the use of children as soldiers; and it requires the State Department to report to the Congress on U.S. efforts in Colombia to promote alternative development, recovery, and resettlement of internally displaced persons, judicial reform, and the peace process and human rights. It also requires reports on the activities of U.S. private contractors involved in counter-narcotics programs in Colombia, an issue brought so compellingly to the attention of the House by the gentlewoman from Illinois (Ms. SCHAKOWSKY) and the gentleman from Michigan (Mr. HOEKSTRA).

Mr. Speaker, this is an important bill that is long overdue, and I urge my colleagues to approve the rule and adopt the conference report on H.R. 1646.

Mr. Speaker, I reserve the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. LAHOOD).

Mr. LAHOOD. Mr. Speaker, I rise today to object to some language that is in this conference report having to do with assistance to Lebanon. There was an attempt early on with an amendment to eliminate most of the money for Lebanon, and I guess wiser heads prevailed.

I want to offer my thanks to the chairman of the full Committee on International Relations for working out an arrangement that will allow for the country of Lebanon to be authorized for $35 million. The language I object to is that they have carved out $10 million that cannot be used for the country, $10 million of the $35 million, until there is a certification from the President that a certain group that is in the country is no longer a threat. I think this is a mistake to have this kind of language in there. The country of Lebanon is 3 million people. It is a peace-loving country. It is caught in the switches between other countries who are involved in disputes. To single out this country for this kind of certification I think is without merit. I wish the language were not in there.

The $35 million is walking-around change compared to the money that is authorized for a lot of other countries. Lebanon certainly does not deserve this kind of treatment from this Congress. I know there are people in the administration, particularly in the State Department, who have strong objections to the way that Lebanon is being treated. I, too, have strong objections, and I wanted to make those objections known. I intend to vote for the rule. I know that the chairman and others have worked very hard to put together a good conference report; but my objection for the country of Lebanon needs to be noted here. Again, this to me is just an opportunity to take a very unjustified criticism of a country that has tried to work with the United States, has tried to work with other countries in the region. I object to the language, and I hope at some point people will come to respect the country of Lebanon and what the leaders there are trying to do.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Speaker, I rise to state my very strong support for the conference report on the International Relations Authorization Act for fiscal year 2003. I commend the gentleman from Illinois (Mr. HYDE); the ranking member, the gentleman from California (Mr. LANTOS), as well as Senator BIDEN and Senator LUGAR, for their hard work to support the State Department at a time when alliances and international partners matter most.

By paying more of our back dues to the United Nations, we are finally stepping up to the plate and being a responsible partner in this great international organization we helped create.

This bill also makes a bit of history by authorizing a new way to protect the United States from the threat of weapons of mass destruction: debt-for-security swaps.

In June, the leaders of the G–8 nations agreed to fund nonproliferation programs at $20 billion over the next 10 years and stated that debt-for-program exchanges should be used to stop the spread of nuclear, chemical, and biological weapons.

Several months ago I introduced the first bipartisan nonproliferation legislation in the 107th Congress with the gentleman from New York (Mr. MCHUGH), the gentleman from Wisconsin (Mr. GREEN), and the gentleman from California (Mr. SCHIFF), the Russian Federation Debt Reduction for Nonproliferation Act for 2002, that would authorize the President to forgive a portion of Russia's outstanding debt to us in exchange for Russia using that money to lock down loose nuclear weapons and material.

Our colleagues in the House and Senate went a step further, including a debt-swap provision in the State Department authorization bill. Debt-for-security swaps are an important development. They will help Russia reduce its outstanding debt, involve Russia and the rest of the G–8 countries in programs that directly improve U.S. national security, and extend burden-sharing to our allies.

Mr. Speaker, now is the time to seize this existing and unique opportunity to use a tool that would both help stabilize the Russian economy and find new sources of funding for the critical programs that keep nuclear weapons out of the hands of Saddam and al Qaeda. I encourage Members to vote for this bill.

Mr. DIAZ-BALART. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DREIER).

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I congratulate the gentleman from Florida (Mr. DIAZ-BALART) for his very important efforts on this legislation. I also join in commending the chairman of the Committee on International Relations, the gentleman from Illinois (Mr. HYDE), and the ranking member, the gentleman from California (Mr. LANTOS), for reporting out this very important State Department authorization. This, as we know, covers a wide range of issues; and I would like to take just a moment to focus on one particular issue, and that has to do with the new degree of flexibility which is being put into place to deal with our war on drugs.

We know that President Uribe from Colombia is here in the United States. He met with President Bush today and met with a number of us yesterday. I believe that efforts are being made by leaders in Latin America to deal with the tremendous scourge of drugs that have been flowing into this country.

□ 1500

But we had a very antiquated structure for certification, decertification, was something that went on. In fact, it was very, very poorly crafted and I believe that it played a role in exacerbating rather than improving the situation. The language that is included in this conference report provides, as I mentioned, a degree of flexibility. So it basically uses the two words ''demonstrably failed'' in describing what it is that countries would have done who are dealing with this issue.

So the point is, we need to congratulate, encourage and support those nations which are helping us deal with

the illegal drug problem that we have faced as a Nation. I particularly want to congratulate President Fox who has faced a great deal of challenges in his country. He has come forward and in dealing with this question, there is the horrible Tijuana-based Arellano Felix drug cartel. Under President Fox's leadership, two of the very powerful members of that cartel have been arrested. There are other ongoing efforts taking place between the United States and Mexico. I believe that the language that is now incorporated in this conference report will help us further deal with this difficult challenge.

I want to congratulate all those involved in this very important effort and to say that I strongly support the rule that is being managed by the gentleman from Florida (Mr. DIAZ-BALART) and the conference report that the gentleman from Illinois (Mr. HYDE) will be managing.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I rise in support of the rule and I must say that I support most of the provisions of the conference report. I am concerned, though, and I do object to one provision with regard to India. In section 1601 of the legislation, the President is required to submit a report to Congress with regard to U.S. efforts relative to nonproliferation benchmarks. There is mention in that regard of both India and Pakistan.

Mr. Speaker, I do not think that India should be mentioned and specified in this report for the following reasons: First of all, in the House version of the bill we did not include India. India was included at the behest of the Senate. And if you think about it, since 1998, when India and Pakistan both tested nuclear weapons, India has had very good relations with the United States and has had numerous discussions on the issue of benchmarks for nonproliferation. Right now basically there is no disagreement between the United States and India in that regard. India has stated very dramatically that it has put in place a moratorium on further testing of nuclear weapons. India has also been very adamant about a policy of no first use of nuclear weapons, which is certainly not the case with regard to Pakistan. For that reason, I do not think we need to include India in any further negotiations or in any report that would have to be submitted on behalf of the President.

I am not quite sure why it was the case that the conference report did not adopt the House version of the bill, which I think made a lot more sense than the Senate version, and I did want to raise an objection at this time because I think that once again our policy is somehow reflecting that if Pakistan is included then India has to be included as well. I think that does not make sense under the circumstances.

Mr. MCGOVERN. Mr. Speaker, I yield myself the balance of my time.

I urge my colleagues to approve this rule and to approve the conference report.

Mr. Speaker, I yield back the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield myself such time as I may consume. I again would like to thank Chairman HYDE and Ranking Member LANTOS for leading the Committee on International Relations to a very, not only successful but I think admirable and commendable result in this legislation. This is, as I stated before, very important legislation. By virtue of the fact that it is in effect consensus legislation in that it is supported in a bipartisan way by an overwhelming majority obviously of the committee, but also I am sure later by the House, it does not I think in any way minimize the importance and really the brilliance of the result.

This country, the Nation, the United States of America, has not only a role in leadership, a leadership role in the world but constantly has to be developing ways to implement that leadership on behalf of protection of democracies and the spreading of the values of freedom. This legislation goes a long way in once again doing that, and so it is legislation that I strongly support and urge my colleagues to as well.

I think that if there is a chairman and ranking member whom I certainly look at and admire for their clarity and their leadership and their vision, it is the chairman and the ranking member of the Committee on International Relations. I would like to reiterate not only my thanks but my admiration for both of them. This is another example of why I think we all thank them and admire them. The issue was brought out of the fact that this legislation, for example, supports broadcasting to the oppressed people of Cuba, and it does and I am very proud of that. Despite the fact of the opposition of some folks such as the gentleman who expressed opposition once again to broadcasting to the oppressed people of Cuba, the overwhelming majority on a bipartisan basis of this Congress has supported and has continued and continues to support that broadcasting and the efforts to offer news and information as well as assistance to that people only 90 miles from our shores that have been suffering for over 40 years oppression. Again, if there is a leadership of a committee that I think demonstrates on a bipartisan basis in terms of the chairman and the ranking member clarity and lack of confusion with regard to dictators and tyranny and oppression, it is the leadership again of Chairman HYDE and Ranking Member LANTOS.

I think this is legislation that we can all be proud of, Mr. Speaker. Again, I strongly support it and the rule, which is eminently fair and permits obviously all Members to express any points of view that they may have on this legislation.

Mr. Speaker, I urge support for the rule and the underlying legislation.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. HYDE. Mr. Speaker, pursuant to the rule, I call up the conference report on the bill (H.R. 1646) to authorize appropriations for the Department of State for fiscal years 2002 and 2003, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Pursuant to House Resolution 545, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of September 23, 2002 at page H 6422.)

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) and the gentleman from California (Mr. LANTOS) each will control 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of the conference report on H.R. 1646, the Foreign Relations Authorization Act for Fiscal Year 2003. This comprehensive foreign policy legislation will give the President and the Secretary of State the tools they need to conduct a foreign policy that strengthens the security of the United States, protects American interests and promotes American values.

Mr. Speaker, it is traditional that in matters of foreign policy the Congress leaves the President and the Secretary of State some flexibility. This legislation respects that tradition, but it also sets limits, both on the amounts that may be spent and on the purposes for which they may be used. It identifies foreign policy priorities and it requires that Congress be kept informed.

Mr. Speaker, this conference report reaffirms and strengthens the authority of the U.S. officials to combat terrorism and to protect our embassies and the people who work in them. It also reaffirms and strengthens the United States' commitment to the survival of Israel and to a just peace in the Middle East, to United Nations reform, to the continued existence of a democratic Taiwan, and to religious freedom and other fundamental human rights.

To be specific, Mr. Speaker, this legislation will enhance our national security by authorizing $1.6 billion for security at our embassies and other United

States missions abroad and by providing new law enforcement authorities for the diplomatic security agents who are charged with the protection of these missions. It will also authorize new counterterrorism assistance to countries that are helping us in this global struggle, and provide new authorities for the State Department's Bureau of Verification and Compliance, which monitors compliance by foreign governments with arms control agreements in order to stop the flow of weapons of mass destruction to terrorists and to rogue regimes.

The conference report also reaffirms and strengthens our commitment to freedom and democracy by setting aside funds for enhanced human rights monitoring, extending the life of the U.S. Commission on International Religious Freedom, providing for enhanced U.S. diplomatic efforts to promote human rights in Tibet and Vietnam, and requiring State Department officials to work for reform of the United Nations Commission on Human Rights whose membership now includes some of the world's worst human rights violators.

This legislation would also complete the process of United Nations budget reform which we began several years ago under which the U.S. dues to the U.N. will be lowered from 25 percent to 22 percent of the total. Our contributions to U.N. peacekeeping operations will also be reduced through the end of fiscal year 2004 and thereafter will be capped at 25 percent. In addition, 15 provisions promote sound financial and management practices at the U.N. and its affiliated agencies.

The conference report will strengthen our bilateral relationship with important allies, such as Israel and Taiwan. It not only provides enhanced antiterrorism assistance for Israel but also contains provisions to spur compliance with existing U.S. law recognizing Jerusalem as the capital of Israel. The conference report also includes the Middle East Peace Commitments Act of 2002, which requires the President to determine whether the Palestinian Authority is complying with its commitments under international agreements, including the renunciation of terrorism and violence, and to report to Congress on what actions will be taken in the event of noncompliance. The legislation also authorizes the transfer to Taiwan of four Kidd class destroyers, as requested by the Bush administration, and requires that Taiwan be treated for purposes of military assistance as though it had been designated as a major non-NATO ally.

□ 1515

Finally, Mr. Speaker, the bill contains important provisions to protect a variety of other vital American interests. For instance, it requires a plan from the State Department for improving the recruitment of veterans into the Foreign Service, as well as a report on steps taken by the U.S. Agency for International Development to ensure that the bidding procession is fair to small businesses in the United States. The legislation will require senior State Department officials in the law enforcement bureau to have some experience with law enforcement and/or international counternarcotics efforts, and it will require the State Department to report to Congress on foreign governments that refuse to extradite criminals for prosecution in the United States or to comply with the Hague Convention on International Child Abduction, as well as on joint cooperative efforts to eradicate opium in Colombia.

Mr. Speaker, I urge my colleagues to vote ''yes'' on this important legislation.

I would like the record to show what a pleasure it was to work with the ranking Democrat, the gentleman from California (Mr. LANTOS), whose cooperation and vision has added greatly to the end product.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume, and I rise in strong support of this conference report.

Mr. Speaker, first I want to thank my good friend, the gentleman from Illinois, for his most gracious words.

Mr. Speaker, let me at the outset congratulate the distinguished chairman of the Committee on International Relations on bringing this conference report to the floor. Since this matter last came before the House, a myriad of procedural and substantive issues blocked the path of this bill. At every turn, the outstanding leadership of the gentleman from Illinois (Chairman HYDE) brought us closer to our shared goal, and today an important and very substantive bill is before us.

Mr. Speaker, I believe this bill blends the very best features of the original House-passed measure and the Senate amendments. The conference report authorizes funds for the conduct of the foreign relations of the United States of America and funds urgent U.S. priorities, such as the security of our embassies abroad, broadcasting to the Middle East and Asia to communicate our values and points of view to foreign audiences, protection of refugees, and scores of other issues.

Perhaps most significantly, Mr. Speaker, our bill takes a huge step towards normalizing our relations with the United Nations. It allows payment of our remaining arrears payments to the U.N. and clears our debts with a host of other smaller, but important, international organizations.

In addition, our bill includes a new authorization that clears the way for the United States to begin paying our bills on time instead of a year late. Because of late payments, the U.N. has been forced to adopt unsound budgetary practices. Our legislation will help put the United Nations and other international organizations on a proper and businesslike financial footing.

Mr. Speaker, I am particularly delighted that the conference report includes language on the reentry of the United States into UNESCO, the United Nations Economic, Social and Cultural Organization. Several of us have been working for years to bring about this result, and I am truly pleased that in his speech before the United Nations on September 12, President Bush added his support for this critical initiative. The conference report now reflects this new consensus, which is truly bipartisan, to rejoin this important organization, so that the voice of the United States will be loud and clear in UNESCO.

Our actions are particularly timely, as we are in the midst of working with the United Nations to enforce U.N. Security Council resolutions aimed at Iraq. Our bill clearly demonstrates Congress' commitment to multilateralism, and it offers a vote of confidence in the United Nations. It is now time for the United Nations to prove itself worthy of such confidence by defending its principles and enforcing its resolutions. With the passage of this bill, the United States will have done its part. Now the Members of the United Nations Security Council must do theirs.

Mr. Speaker, there are a number of other important features in this bill, and I would like to highlight some of them.

Our bill authorizes U.S. counterterrorism and nonproliferation assistance as well as military assistance to recent and future NATO entrants and some of our key allies in the war against terrorism.

The bill also includes a trailblazing initiative to strengthen nonproliferation programs in Russia while retiring that nation's huge Soviet-era debt. Under our initiative, the United States will forgive that debt, and Russia will use the savings to pursue programs, such as securing its stocks of weapons-grade uranium and plutonium from terrorists and state sponsors of terrorism.

The bill has numerous important provisions on the Middle East, including the stopping of illegal weapons transfers to the Palestinians and ensuring that the PLO is abiding by the commitments it made almost a decade ago in 1993 to stop the use of violence and to negotiate peacefully. Our bill reaffirms United States policy that Jerusalem is the undivided and eternal capital of the State of Israel.

I also note that a compromise provision on Lebanon included in the conference report will create a real incentive for that government to deploy its forces along its own national frontier in areas currently controlled by Hezbollah, a terrorist organization. Our bill provides for new exchange programs for Sudanese oppressed by war and for scientists who conduct research on HIV–AIDS.

Our legislation, Mr. Speaker, provides that the Secretary of State should establish programs to train scientists and public policy experts on

ethical issues relating to drug trials, allowing governments in developing countries to evaluate any trials by foreign pharmaceutical companies on their citizens.

I am particularly pleased, Mr. Speaker, that the conference report contains the Tibetan Policy Act of 2002, legislation I introduced along with my good friends and colleagues, Senator FEINSTEIN, the gentleman from New York (Mr. GILMAN), and the gentleman from Illinois (Mr. KIRK). This legislation is the first piece of comprehensive Tibet legislation ever enacted in the Congress of the United States, and it will send a strong signal to the Chinese Government that the United States has not forgotten the plight of Tibet and its people. Our legislation will promote human rights and religious freedom in Tibet, and it will ensure the development sponsored by international institutions benefits the people of Tibet.

The conference report also contains measures I introduced, along with the gentleman from New Hampshire (Mr. KENNEDY) and many others, to help the people of East Timor. After more than 2 decades of brutal Indonesian rule in East Timor and the enormous devastation subsequent to East Timor's vote for independence, our legislation will ensure that East Timor's people get the assistance they need to get back on their feet.

In addition, Mr. Speaker, our act provides for ensuring that those who commit crimes against humanity are not treated with impunity. In particular, we provide U.S. funding for the Special Court in Sierra Leone, which will deal with the human rights atrocities from that country's deadly civil war and authorizes a new U.S. rewards program to help apprehend those that the Special Court indicts.

Our legislation reauthorizes funding for victims of human trafficking, extends the life of the Commission on International Religious Freedom, and ensures that human rights are more fully integrated into the State Department's policy considerations.

Mr. Speaker, this is a major piece of legislation, crafted in a truly bipartisan manner with a great deal of statesmanship on the part of many Members. But I particularly want to pay special tribute to my good friend, the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on International Relations, for his leadership on this most important legislation. I urge all of my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Speaker, I rise in support of this legislation, but I have a serious reservation that I would like to discuss. I speak as chairman of the Subcommittee on Drug Policy and cochair of the Speaker's Drug Task Force to express my concern with the permanent modification to the annual drug certification process contained in this bill.

The annual certification process is one of the strongest tools that we have as a Nation to ensure full cooperation from other nations with our efforts to control international narcotics traffic by conditioning U.S. foreign aid on such full cooperation. I believe that this is a reasonable and basic condition on the use of taxpayer dollars. Clearly, American workers should not be asked to subsidize the programs of foreign governments that will not help us stop drug traffic.

As a practical matter, we have also heard scores of anecdotal reports that the threat of decertification often has been the only real means for American officials serving abroad to get meaningful cooperation on matters such as extradition, law enforcement, and many other means of controlling the drug trade.

In fact, I was part of the Presidential delegation down to the swearing in of the new President of Bolivia; and outgoing President Cariaga made a special pitch to me and the other members of the delegation, Do not compromise this regulation. He said it was the only tool that they really had in Bolivia to take them down from supplying one-third of our cocaine down to about 2 percent, and he said that this was the most effective tool.

I appreciate very much the work that the gentleman from Illinois (Chairman HYDE) and his staff did to minimize what I believe will be a permanent weakening of the certification process in this legislation. I was disappointed that the administration supported weakening the certification standard from fully cooperating, which has been proven to work successfully over several years, to leaning toward a new standard that would only decertify those countries that have failed demonstrably to make substantial efforts to cooperate.

Instead of the burden falling on countries who want American aid to cooperate completely with our efforts, we will now presume in many cases that the foreign nations are cooperating, and the State Department will have to prove that they are not doing so. No major drug source or transit country should ever presume that it is entitled to American money, and this body certainly should not enshrine such a presumption into law.

I am particularly concerned that it appears that the administration and the other body were determined to weaken the standard to satisfy a single foreign country. I worked with the gentleman from Florida (Mr. MICA), who has long been involved with this statute, to propose an alternative. The alternative would have kept the current standard for decertification, but only would have publicly named those countries who are not fully cooperating, instead of the entire majors list, which will still be made public under the modified law.

□ 1530

We believe that this would have addressed the concerns of the nations. They have talked to me on every visit down to Central and South America, and they are concerned about this listing and seeming to have to go through a proving process, but it would only have listed those who are not fully cooperating, and would have still maintained our option to enforce tough sanctions.

I am still baffled that the administration would not work with us on this compromise which I believe is far superior to the provision in the bill today.

I am pleased, however, that the conferees agreed to change the certification reporting date back to September 15 from early November, which had been proposed in the original version of the bill. An early November report would have essentially removed any congressional role from the process.

I also strongly support the bill's provision allowing the President to use the old ''fully cooperating'' standard in making certification determination as he sees fit. I fully encourage the administration to use this standard as the basis for its determinations in the coming year, rather than the weaker ''demonstrably failed'' standard included in this bill. The traditional standard has been successful for many years as a tool for our foreign policy and has reflected congressional intent for many years on the proper standard to be applied in allocating taxpayer dollars. Unfortunately, the new standard seems only to reflect an agreement between the administration and a few select Members of Congress.

Let me give one specific example. If a Nation does not cooperate with us on extradition, one of the toughest and most important things, does that mean that they have demonstrably failed, or does it mean they are not fully cooperating? Clearly, they would not be fully cooperating, but it is not clear that they would have demonstrably failed. So at the margins of the real world, unless the administration takes the fully cooperating standard, we are in a real box here.

My question would be, is this going to be our new standard on terrorism? Is this going to be our new standard on human rights? If not, why is it different on drugs than it is on human rights and terrorism? I know that it has been offensive for us to list all of these different countries and try to make them prove the case, but we need something more than ''demonstrably failed'' and we need something that enables and gives the administration the flexibility. I hope they will exercise what they have been given in this bill, because there is nothing more tragic

right now going on in America, thousands of people dying on our streets because of drug abuse and the cocaine and heroin and methamphetamines and BC Bud pouring into this country, and I hope that we do not back up on this administration on drug policy.

Mr. LANTOS. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from Vermont (Mr. SANDERS), my good friend and our distinguished colleague.

Mr. SANDERS. Mr. Speaker, I thank my good friend, the gentleman from California (Mr. LANTOS), for yielding me this time.

Mr. Speaker, I rise today in strong support of the Israel-Arab Peace Partners Program, which is reauthorized in H.R. 1646. The Israel-Arab Peace Partners Program is a program that I helped to create in 1999 with my good friend, the gentleman from New York (Mr. GILMAN). I would like to thank the gentleman from New York (Mr. GILMAN) for his leadership on this program and for his help to ensure that it was reauthorized in this bill and that it receives proper funding in the appropriations process. I would also like to thank the gentleman from Illinois (Mr. HYDE) very much for his support and for his effort, as well as the ranking member, the gentleman from California (Mr. LANTOS), who has been very supportive of the effort as well.

The Israel-Arab Peace Partners Program authorizes a $750,000 pool of grant money within the State Department's Bureau of Educational and Cultural Affairs to fund public and private nonprofit organizations for people-to-people activities with participants from Israel, the West Bank, Arab countries, and the United States. Through this program, American organizations link up with Israeli, Arab, and American partners to exchange skills and ideas on issues such as health care, the peace process, the environment, and education. By working on issues of common interest to all, people of the region are able to form bonds that cross borders and build trust and skills that not only helps each of their individual communities, but also helps bring them closer to peace. In addition, it brings American citizens and organizations in contact with people from a region where the United States plays such a crucial role.

I think it is important to note the wide range of well-respected groups that have participated in the program over the last few years. Brandeis University, Catholic Relief Services, Fairfax County Public Schools, St. Michael's College, Arava Institute for Environmental Studies, Seeds of Peace, American-Jewish Joint Distribution Committee, Conflict Management Group, and American University. Some of these groups already have well-established programs in the Middle East; for others the Israel-Arab Peace Partners Program provides an opportunity to begin programs that will grow in the years to come. The more groups we can aid in establishing ties in the region, the better chance we have to build a long lasting network of organizations which are working toward professional development, community exchanges, and peace.

This summer I was able to meet with a group of 20 Israeli, Palestinian, Jordanian, and American students who were here in Washington to participate in a program funded through the Israel-Arab Peace Partners Program. Amid all the senseless killing and suffering going on in the Middle East, I was amazed to see this group of students come together to study the environment. For many of the Israeli students, it was their first time meeting an Arab person their age and vice versa. After working together on month-long, environmentally-focused internships all across this country, these students began to see each other not just as Arabs or Israelis or Americans, but as colleagues and friends. They were able to understand a little bit better what it was like to live as an Israeli or an Arab in the Middle East.

This understanding and the real life professional skills that they learned from each other and through their internships was, to me, a ray of hope amid all the devastation in the Middle East, and it really was an honor to see people from the Middle East, from Israel, from the Palestinian Authority, from Arab countries coming together in the midst of all of the horror that is existing there, talking about the environment, talking about how people can work together to make the entire region a better place in which to live.

So, Mr. Speaker, I am very strongly supportive of this effort. I think the relatively small amounts of money that we are spending here to bring people together who are living amidst all of the horror that is going on in the Middle East, to have Arabs talking to Jews talking to Christians, is exactly what we should be doing. I would hope that this becomes a step forward in continuing to have the United States fund programs like this.

Again, I want to thank the chairman and ranking member for their strong support.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 3 minutes to the learned gentleman from New York (Mr. FOSSELLA).

(Mr. FOSSELLA asked and was given permission to revise and extend his remarks.)

Mr. FOSSELLA. Mr. Speaker, I thank the gentleman from Illinois for yielding me this time.

I would like to highlight one provision in this conference report that I think is critical and underscores why there needs to be a consistent, government-wide policy when it comes to dealing with victims of terrorism.

In the first half of 2002, Congress introduced several legislative initiatives to allow all victims of terrorism equal opportunity to recover damages from the assets of terrorists and State sponsors of terrorism. The purpose of the bill is to allow victims of terrorism to obtain justice and, simultaneously, to hold accountable those who commit and support terror. Provisions have passed both the House and the other body by a recorded vote of 81 to 3.

The proposed language included in the State authorization conference report will allow only two victims to receive compensatory damages for acts of international terrorism from the frozen assets of designated State sponsors of terrorism and completely ignores what Congress has attempted to achieve this year on behalf of all of the victims. Now, this is not to take away from the victims of terrorism. It is important. They suffered, they suffered greatly, and they are entitled to compensation. But what this underscores and highlights really is important, because all of those folks who may have suffered the same set of circumstances, even worse in some cases, from the same groups of terrorists or those who sponsor terrorism, have been shut out and denied the same level of justice that others on a piecemeal approach have obtained.

In light of what has happened in the last year, where potentially we are looking at thousands of victims of terrorism, is it not about time that an American citizen who suffers from the hands, the violent hands of a terrorist or those who sponsor terrorism and is able to obtain a judgment where the assets are frozen should be entitled to the same set of rights? Instead, what we have, and I hope it does not continue, but unless we pass it in the two competing bills in the House and the Senate, it will; unless we do something about it, each year there will be victims, and whoever can hire the best attorney or the best lobbyist will find its way into one of these conference reports. As long as that continues, there will be families and victims of terrorism who will be denied the same set of compensatory damages. I do not think it is right, I do not think it is just. I just want to bring that out to underscore why we need to pass it for all Americans who are entitled to the same set of rights and opportunities when it comes to justice.

Mr. LANTOS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. SCHIFF), my good friend and distinguished colleague.

Mr. SCHIFF. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise today in support of H.R. 1646, the Foreign Relations Authorization Act and, in particular, language in the bill on Russian Federation Debt for Nonproliferation. I want to applaud the conferees for including this very important language on ways to reduce the threat of weapons of mass destruction in the final conference report.

The demise of the Soviet empire ushered in a new post-Cold War period and

a very real sense of urgency with regard to the former Soviet Union's weapons stockpile. It has become tragically clear that new threats have emerged and terrorists and the States that sponsor them are actively in search of nuclear, biological, and chemical weapons technology and materials.

During the last 11 years, the Nunn-Lugar program, which was launched to reduce threats from the former Soviet Union, has done much to dismantle these stockpiles. However, continuing economic and social weaknesses in Russia, coupled with an eroding early warning system, poorly secured Russian weapons materials, and poorly paid Russian weapons scientists and security personnel increase the threat of mass destruction on an unprecedented scale if such materials fall into the hands of terrorists or rogue nations.

Now, more than ever, we must make a fundamental shift in the way we think about the spread of weapons of mass destruction and our own national security. Using Russia's debt to the United States as a funding mechanism for programs addressing the inadequate security of the Russian weapons stockpile is an innovative approach we must explore.

The Russian Federation Debt Reduction for Nonproliferation Act, which I coauthored with the gentlewoman from California (Mrs. TAUSCHER), the gentleman from Wisconsin (Mr. GREEN), and the gentleman from New York (Mr. MCHUGH), will provide a means to forgive the loans and credits owed to the United States by Russia in exchange for cooperation with U.S. efforts to monitor and reduce weapons-usable nuclear material, nuclear and other weapons of mass destruction, and the facilities where they may be built.

Securing Russia's arsenal is a massive challenge, but not an impossible one. While the cost of a terrorist attack on the United States involving Russian expertise or smuggled Russian nuclear chemical or biological materials is staggering, funding for these simple measures that can prevent these attacks is sensible and urgent, and I urge Members' support.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before I yield back the balance of my time, I would just like to express my appreciation to Committee staff for the exceptionally effective work that they have put into this legislation. Legislation of this scope and magnitude could never be completed without the dedicated effort of our staff.

The Republican staff of the Committee on International Relations worked with us in a bipartisan way. I want to express my particular gratitude to Kristen Gilley, Walker Roberts and Joseph Rees of the majority staff.

I want to acknowledge the efforts of all of the members of the Democratic staff, since in a bill of this scope, everyone had a hand in the final product. Four people deserve particular recognition.

David Abramowitz, our Democratic Chief Counsel has devoted enormous effort to the successful completion of this bill. We have greatly benefited from his solid legal and political judgement.

David Fite, played a critical role in the security provisions of this bill, and I want to thank him for his outstanding contributions.

lNisha Desai was heavily involved in the initial drafting and adoption of this bill. She has since left our staff, but her contribution was significant.

Peter Yeo, Deputy Democratic Staff Director, as always played an extremely helpful role in bringing this legislation to completion.

In addition, I want to express thanks to Art Rynearson of the Office of Senate Legislative Council, who helped assure that the substances of the legislation was accurate and accomplished what we intended. He is one of thee many unsung heroes who makes this institution function, as we owe him our thanks.

Mr. Speaker, I again congratulate the Chairman of the Committee, and yield back the balance of my time.

Mr. KNOLLENBERG. Mr. Speaker, I rise today to signal my intent to support H.R. 1646, the State Department Authorization Act. It is a good bill with many provisions that will aid the State Department in its mission around the world.

However, I also must express my deep disappointment at the inclusion of Section 1224 regarding assistance to Lebanon. Section 1224 withholds $10 million of the Economic Support Fund allocated to Lebanon for the Fiscal Year 2003 and for all subsequent years unless and until the President certifies that the armed forces of Lebanon have been deployed to the internationally recognized border between Lebanon and Israel and that the government of Lebanon is effectively asserting its authority in the area in which such armed forces have been deployed.

I do not oppose the goal of extending Lebanese control to southern Lebanon. Unfortunately, this provision does absolutely nothing to further that goal and will in fact hinder any progress. The U.S. should continue to press the Lebanese and Syrian governments on this point. The people of Lebanon will only know long-term peace and stability when Lebanon is willing and able to assert its independence. The U.S. must continue to press for full compliance with UN Security Council Resolution 425. However, this provision will not lead us toward this goal.

I have supported efforts to expand U.S. Agency for International Development (USAID) activities in southern Lebanon following the withdrawal of Israeli armed forces. However, far from supporting Hezbollah, this assistance undermines that terrorist organization by eliminating the desperate conditions that so many cite as a reason that region is a terrorist haven.

I have received repeated assurances that U.S. money only goes through American nongovernmental organizations to support projects that provide clean water, medicine, agricultural assistance and other basic humanitarian needs. None of this money goes to the Lebanese government or to any terrorist organization.

With these facts in mind, it makes no sense to me to withhold funding that undermines terrorist control of southern Lebanon. Until the grip that Hezbollah has on that region is weakened, the government of Lebanon will not be able to deploy armed forces to the border.

Unfortunately, Section 1224 only punishes the people of Southern Lebanon rather than offer a solution to the security needs of Israel.

I will vote for the bill, but it is my hope Congress will revisit this issue in future legislation.

Mr. SHAYS. Mr. Speaker, I support the inclusion of Section 213 in H.R. 1646, the Department of State Authorization Act Conference Report. This section of the conference report repeals Section 738 of the 2001 Agriculture Appropriations Act, which gave unwarranted special treatment to foreign agriculture attachés. Both the State Department and the Office of Management and Budget support repealing Section 738, and H.R. 1646 does just that.

In 1978, Congress, with the support of the Office of Management and Budget, endorsed the State Department as the sole manager for overseas property. In 1990, Congress directed State to implement a uniform housing policy for and with the input of all agencies overseas.

That system worked. It has the support of OMB, the General Accounting Office, and apparently had the support of Congress. But last year, a little-noticed section of the Agriculture Appropriations Act changed the system for one agency: the Foreign Agriculture Service.

The provision required the State Department to obtain FAS approval to sell property originally purchased to house FAS employees overseas. Moreover, FAS gained the right to occupy new residences permanently.

That provision created an exception for one agency, an exception that if copied by other agencies would disrupt the equitable management of overseas property. Overseas property management would lose much needed flexibility and make the housing of overseas personnel more difficult and costly.

At my request, GAO looked into this matter. In a July 11th letter, GAO concluded the ''restrictions on the sales of residences purchased for agricultural attachés do not appear to be in the government's best interests. As the single manager for overseas property, State is responsible for implementing cost-effective decisions about the sale of unneeded overseas real estate and using sales proceeds for the government's highest priorities. . . . [T]he restrictions weaken efforts to improve management of the government's overseas properties and conflict with congressional and executive branch efforts to establish State as the single real property manager.''

The properties at issue are not just regular old houses. In Cairo, the residence is a 4,200-square-foot, two-level house with four bedrooms, three bathrooms, two living rooms, a dining room, two kitchens, a sunroom, a breakfast room, and terraces. In Vienna, the residence is a 3,500-square-foot, three-story villa with six bedrooms, three bathrooms, a terrace, breakfast room, basement, and garage. Both houses exceed established housing standards.

This unsound FAS exception is delaying the sale of these valuable properties, a sale that could net at least $2.1 million. The provision may also complicate the sale of other properties, such as an underutilized property in Bangkok worth $50 million.

The State Department manages 3,500 properties in more than 220 locations overseas and has had the authority to sell those properties since 1926. Proceeds from sales are used to acquire and maintain other properties. In the wake of the 1998 embassy bombings in

Kenya and Tanzania and other terrorist attacks, proceeds from these sales are used to ensure the safety of our embassies and personnel abroad. Providing special treatment to FAS prevents the State Department from implementing some of the measures necessary to protect our diplomatic personnel.

Mr. Speaker, the letter from GAO, ''Current Law Limits the State Department's Authority to Manage Certain Overseas Properties Cost Effectively'' (GAO–02–790R, July 11, 2001) follows. A more complete version of the letter is available at http://www.gao.gov/new.items/d02790r.pdf.

U.S. GENERAL ACCOUNTING OFFICE,
*Washington, DC, July 11, 2002.*

Hon. CHRISTOPHER SHAYS,
*Chairman, Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform, House of Representatives.*

Subject: Current Law Limits the State Department's Authority to Manage Certain Overseas Properties Cost Effectively

DEAR MR. CHAIRMAN: The Department of State is the central manager for real estate at U.S. embassies and consulates and has the statutory authority to sell properties and use the sales proceeds to acquire and maintain other overseas properties. Section 738 in the fiscal year 2001 Agriculture Appropriations Act prohibits State from selling residences purchased to house agricultural attachés without approval from the Foreign Agricultural Service (FAS) and requires the department to use the proceeds from such sales to purchase residences for these attachés. Legislation currently before the Congress would repeal section 738.

At your request, this report discusses the effect of section 738 on State's management of overseas properties. We examined this issue as part of our review of the Department of State's performance in identifying and selling unneeded overseas real estate. In conducting this assignment, we interviewed officials and analyzed records at the Department of State, FAS, and the Office of Management and Budget (OMB).

RESULTS IN BRIEF

Section 738 limits the Department of State's authority to implement cost-effective decisions about sales of unneeded overseas property and the use of sales proceeds. Because of section 738's restrictions, State has delayed two property sales valued at nearly $4 million that appear to be in the government's best interests. FAS is concerned that if section 738 is repealed, selling these properties will result in increased costs for FAS since it would have to lease housing for attachés who previously lived rent-free in government-owned housing. State acknowledges that this could occur but save its financial analysis shows that selling the houses benefits the government as a whole. Although section 738 applies only to residences purchased for agricultural section 738 applies only to residences purchased for agricultural attachés, OMB and State are concerned that it could lead to fragmented and less cost-effective management of overseas property if other agencies seek similar treatment for their senior representatives. In our view, section 738's restrictions do not appear to be in the government's best interests.

This report suggests that the Congress may wish to consider repealling section 738. State officials, commenting on a draft of this report, said they agreed with the report's information and conclusions regarding the negative effects of section 738 on overseas property management. FAS officials reiterated their view that repealing section 738 could result in increased costs for FAS. We believe that if the section's repeal and sale of residences used by agricultural attachés increases FAS costs, the Department of Agriculture can request that the Congress consider providing additional funds for FAS operations.

BACKGROUND

The Foreign Buildings Act of 1926, as amended, authorizes the Secretary of State to sell overseas properties that are used to support diplomatic and consular operations in foreign countries. The Department of State manages about 3,500 government-owned properties—including embassy and consular office buildings, housing, and land—at more than 220 overseas locations. The law authorizes the Secretary to use the proceeds from the sale of overseas properties to acquire and maintain other overseas properties and requires the Secretary to report such transactions to the Congress with the department's annual budget estimates. The Secretary has delegated this authority to State's Bureau of Overseas Building Operations.

Over the years, as a result of congressional and OMB actions, overseas property management has been consolidated under State. In 1978, the Congress endorsed State as the single manager for overseas property and asked OMB to prepare a proposal for implementing this concept. In 1979, OMB issued a report that supported the concept of single management and acquisition planning for overseas property under State. OMB noted that the Congress was strengthening and broadening State's existing role as the central manager for overseas property. In 1990, the Congress directed State to establish and implement a uniform housing policy for agencies' overseas personnel. Resulting new overseas housing regulations, issued in 1991 and 1992 with the agreement of the foreign affairs agencies and the Department of Defense, reinforced State's authority to act as the single manager for overseas property. These authorities show that the Congress and the executive branch had intended that State should manage overseas property in a consolidated, integrated manner and that doing so would be in the government's best interests. We have supported this concept since the 1960s because it is more effective, efficient, and economical than having multiple property managers.

Since 1997, State has increased efforts to identify and sell unneeded overseas real estate in response to congressional direction and our recommendations. As part of this effort, State sold two residences occupied by agricultural attachés for about $855,000 and proposed selling three others for more than $4 million. FAS argued that these properties were purchased to house its attachés; and consequently, FAS should have a say in approving the sales and in determining how the sales proceeds should be used. As a result, FAS sought and the Congress enacted legislation that requires State to obtain FAS approval to sell residences purchased to house agricultural attachés. Additionally, State must use the proceeds from such sales to acquire other suitable residences for agricultural attachés (not necessarily at the same post), and FAS has the right to occupy these properties permanently. According to FAS, State manages 13 properties purchased for agricultural attachés.

SECTION 738 LIMITS STATE'S AUTHORITY TO MAKE COST-EFFECTIVE DECISIONS ON CERTAIN PROPERTIES

Section 738 of the fiscal year 2001 Agriculture Appropriations Act limits State's authority to sell unneeded property by making sales decisions contingent on FAS approval. Proposed sales of residences in Cairo, Egypt, and Vienna, Austria, illustrate the potential limitations. Although selling these properties appears to be in the U.S. government's best interests, State has postponed these sales because of concerns about section 738. In October 1998, the State Inspector General reported that the Cairo and Vienna residences were larger than housing standards allow, were underutilized, and should be sold. According to State records, the Cairo residence is a 4,200-square-foot, two-level house with four bedrooms, three bathrooms, two living rooms, a dining room, two kitchens, a sunroom, a breakfast room, and terraces. The Vienna residence is a 3,500-square-foot, three-story villa with six bedrooms, three bathrooms, a terrace, breakfast room, basement, and garage. These residences are larger than the housing standards allow. Figures 1 and 2 show photographs of the Cairo and Vienna residences.

State financial analyses suggest that selling the Cairo and Vienna residences would yield net benefits for the government of at least $2.1 million. In addition, using a measure of investment performance, State determined that selling the two residences was a substantially more efficient use of government resources than continued ownership. In February 2001, FAS informed State that it approved the sale of the Vienna residence on condition that the sales proceeds were used to purchase a replacement residence in Vienna and new residences for agricultural attachés at two other posts. Because FAS's proposed use of the proceeds would not address the government's highest priority overseas property needs, State officials decided to postpone the Vienna sale pending repeal of section 738. State subsequently postponed the Cairo sale for the same reason.

State and OMB believe that the sales proceeds should be used to meet the government's highest priority needs. According to its long-range facilities plan, State seeks to reinvest sales proceeds where there is the greatest need or the most opportunity to reduce government operating costs. This plan notes that, in recent years, most sales proceeds have been earmarked for specific capital construction projects, such as building secure embassies. In future years, State plans to use sales proceeds to purchase additional residential housing. Within this broad priority, State plans to direct these proceeds to several objectives: (1) Buying residential properties in locations that offer the greatest rent savings to contain leasing costs, (2) buying earthquake resistant residential properties in seismic areas to address safety issues, and (3) buying key diplomatic properties. Although we did not assess State's priorities or use of proceeds from property sales, its approach is consistent with recommendations we made in 1996 regarding using sales proceeds for the highest priority overseas facility needs.

FAS believes that the sales proceeds should be used to purchase replacement and additional residences for agricultural attachés—not to purchase properties according to State's priorities. FAS said that past sales had displaced two of its attachés from government-owned housing, forcing it to pay about $400,000 over the past 5 years to lease replacement residences. FAS is concerned about having to cut its program budgets to fund additional leases for replacement housing. In addition, FAS complained that it had insufficient advance notice of the proposed sales and had difficulty freeing up funds to pay for replacement housing for displaced attachés.

State acknowledged that FAS may have to lease replacement residences if section 738 is repealed and the two residences are sold. However, financial analyses of the proposed sales considered these costs in determining

that they were cost effective for the government. State also acknowledged that unanticipated sales could cause short-term budgetary disruptions. As a result, in June 2001, assuming repeal of section 738, State offered to pay for leasing replacement housing until FAS could build these costs into its budget in cases where State disposed of the properties with less than 2 years' advance notice. In January 2002, FAS responded that, before agreeing to any sales, it would require State to provide appropriate government-owned replacement housing within 2 years and expect State to make every effort to ensure that sales did not affect FAS's budget. FAS's letter did not address the repeal of section 738. In April 2002, FAS officials told us they were reluctant to accept State's offer because it did not address the long-term budgetary effect of the sales and allowed State to retain control over the use of the sales proceeds.

According to State, if section 738 remained in effect, it could be a complicating factor in the future sale of a compound in downtown Bangkok that could be worth as much as $50 million. In 1998, the State Inspector General reported that the compound—a 15-acre wooded site located in a prime commercial area that contains five executive residences (one occupied by the agricultural attaché) and several other facilities—was underutilized and should be sold. Before the 1997 Asian financial crisis, State had planned to sell the compound and use the proceeds to finance the construction of new facilities at the post, including housing for more than 200 embassy families that would reduce post lease costs by about $73 million over 10 years. Recognizing the changed economic conditions, State reported that further study is needed to determine the appropriate time to sell the compound and the appropriate use of the sales proceeds.

State and OMB Support Repealing Section 738; FAS Opposes Its Repeal

State and OMB support legislation currently before the Congress that would repeal section 738. They argue that its restrictions on State's authority seriously weaken centralized management of overseas properties because they essentially establish a separate executive housing program for FAS and subordinate governmentwide priorities to agency priorities. For example, FAS could disapprove the sale of oversize or high-value residences purchased for agricultural attachés while State was selling residences purchased for ambassadors, deputy chiefs of mission, consuls general, and senior representatives of other foreign affairs agencies. State reported that, between 1997 and 2002, it sold 17 executive residences for about $38 million and is planning to sell 15 additional residences for about $20 million. Additionally, State and OMB pointed out that other foreign affairs agencies and Defense have experienced budgetary effects from the sale of such residences. In these cases, agencies must weigh housing costs in deciding whether to station their employees overseas. State and OMB are also concerned that unless section 738 is repealed, other agencies may seek similar legislation, leading to more fragmented property management and unequal and uneconomical housing policies at taxpayer expense.

FAS opposes repealing section 738. FAS argues that section 738 maintains Agriculture's entitlement to residences purchased to house its attachés. FAS believes that repealing section 738 would allow State to ignore what FAS believes was the Congress' intent in providing funds to purchase these residences, while imposing substantial budgetary costs on FAS.

CONCLUSIONS

Section 738's restrictions on the sales of residences purchased for agricultural attachés do not appear to be in the government's best interests. As the single manager for overseas property, State is responsible for implementing cost-effective decisions about the sale of unneeded overseas real estate and using sales proceeds for the government's highest priorities. However, for residences purchased to house agricultural attachés, implementation of State's decisions is contingent on FAS approval and priorities. Although its analysis shows that selling the Vienna and Cairo residences would be financially advantageous to the government, State does not plan to proceed with these sales if section 738 remains in force. We recognize that, if section 738 is repealed, selling these residences may affect FAS's budget. However, FAS's budgetary concerns need to be weighed against the government's overall benefits from these sales—which include disposing of unneeded property and reinvesting the proceeds where they provide the greatest return. In addition, the restrictions weaken efforts to improve management of the government's overseas properties and conflict with congressional and executive branch efforts to establish State as the single real property manager.

MATTER FOR CONGRESSIONAL CONSIDERATION

In light of our findings, Congress may wish to consider repealing section 738 of the fiscal year 2001 Agriculture Appropriations Act.

AGENCY COMMENTS AND OUR EVALUATION

State officials, commenting on a draft of this report, said the report fairly and accurately represents their positions on the negative effects of section 738 and the reasons they support its repeal. They said it is in the government's interest to have a single property manager with the authority to sell unneeded properties and reinvest the proceeds where they will produce the greatest benefits. State officials reiterated their concern that, by according FAS special treatment, section 738 threatens the centralized management of overseas property and is unfair to the staff of other foreign affairs agencies and Defense.

FAS official reiterated their concern that repealing section 738 could result in additional annual lease costs for FAS and that FAS would need additional budget resources to maintain its current level of services overseas, FAS officials also questioned whether section 738 would fragment overseas property management, stating that only Defense was in a position to assert similar claims to overseas housing.

We continue to believe that, in considering whether to repeal section 738, budgetary concerns need to be weighed against the government's interests in selling these residences and maintaining a single property manager with the authority to sell unneeded properties and reinvest the proceeds where they will produce the greatest benefits. If the section's repeal and subsequent property sales increase FAS costs, Agriculture can request that Congress consider providing more funds for FAS operations. Additionally, we agree with State that section 738 accords FAS preferential treatment and that other foreign affairs agencies and Defense will likely seek similar treatment for their overseas executives. We believe this would weaken centralized overseas property management, which we have long supported because it is more effective, efficient, and economical than an noncentralized approach.

SCOPE AND METHODOLOGY

To determine the effect of section 738 on State's management of overseas property, we analyzed applicable laws, regulations, and guidance that provide State's authority to sell properties and use the proceeds. Key laws, regulations, and guidance include the Foreign Buildings Act, section 738 of the fiscal year 2001 Agriculture Foreign Affairs Manual. We also examined past GAO and State Inspector General reports on overseas property management. We analyzed State and FAS records that summarized their assessment of the effect of section 738 on State's authority to buy and sell overseas properties and act as the single manager for overseas property. We discussed section 738's effect with appropriate State, FAS, and OMB officials. We examined State's rationale for selling the properties in Cairo, Vienna, and other locations, including State's financial analyses of the proposed sales, OMB guidance on evaluating asset sales, and State's fiscal year 2002 to 2007 long-range buildings plan. We did not access the accuracy or reliability of the property appraisals or other underlying data used in State's analyses or the priorities and objectives in its long-range plan.

We conducted this review from April to July 2002 in accordance with generally accepted government auditing standards.

We are sending copies of this report to other interested congressional committees, the Secretaries of Agriculture and State, the FAS Director, State's Director of Overseas Buildings Operations, OMB, and other interested parties. Copies will be made available to others on request. In addition, this report will be available at no charge on our Web site at http://www.gao.gov.

If you have questions about this report, please contact me at 202–512–4128 or by e-mail at fordj@gao,gov John Brummet, Michael Rohrback, Ed Kennedy, Richard Seldin, Janey Cohen, and Stephanie Robinson made major contributions to this report.

Sincerely yours,

JESS T. FORD,
*Director, International Affairs and Trade.*

Mr. MENENDEZ. Mr. Speaker, I rise in reluctant support of this important legislation. I say ''reluctant'', not because of what is in the bill, but because of what is not in the bill. This bill could have been a much better product, and it strongly underscores why the American people should think long and hard about which party should be in control of this great institution come November.

It is unconscionable that we are debating this bill today only because Speaker HASTERT and Majority Whip DELAY threatened to throw this entire bill in the waste can unless it excluded a non-binding, ''Sense of the Congress'' resolution stating merely that the United States should re-engage in the international effort to reduce the greenhouse gas emissions that have led to global warming. Were this to continue unabated, the consequences could be so dramatic that we can barely imagine them today.

The language that was forcibly removed by the Speaker and the Majority Whip already was passed by the full House. Its arbitrary removal by the anti-environmental House Republican leadership shows not only how radical things have gotten around here, but more importantly that they do not want the American people to know anything about their radical, anti-environmental agenda—certainly not with just over a month before the mid-term elections.

Second, the perennial underfunding of State Department operations had become a international embarrassment due to the short-sighted cuts forced by our friends on the other side of the aisle. Now we can say that some relief is on the way, although many Americans would be embarrassed to see the awful conditions of some of our diplomatic facilities

abroad. Let me remind the all too-eager hawks in the Majority and in the Administration that diplomacy is truly the first line of defense.

Second, I am glad to have joined with my colleague from Alabama, Mr. HILLIARD, the Congressional Black Caucus and the Asian-Pacific American Caucus, in developing language in this bill to ensure that the State Department makes progress in its recruitment and promotion of minorities to its senior-most ranks. Our language makes clear that Congress is looking for results in the recruitment and promotion of minority professionals. It provides $2 million to increase minority recruitment in the Department and requires the Department to track its results with a database.

The General Accounting Office (GAO) reported in a long-term study that despite years of effort from Congress, the State Department has failed to make any significant progress in the recruitment and promotion of qualified minorities to senior management positions. For example, the State Department—along with the Federal Emergency Management Agency—actually promoted fewer minority managers in 1999 than in 1990.

While having more minorities take the foreign service exam is a step in the right direction, that is but a small step, and only one among many more steps needed, to rectify the severe under-representation of qualified Hispanic Americans, African Americans and Asian-Pacific Americans in the foreign affairs agencies. All three caucuses join together to urge President Bush and Secretary of State Powell to ensure that we, at long last, get on with the business of obtaining results in minority recruitment and promotion at the State Department and the foreign affairs agencies.

If the State Department is to make progress, minorities must have a seat at the table. And that means, among other things, a seat at the table at the promotion boards and the selection boards—the entities that placed officers in senior positions. We will look for results and we will continue with these efforts until we see results.

Third, this bill includes the ''Iran Nuclear Non-Proliferation Act'', a bill I first introduced in 1998, and whose passage could not be more timely than today. In response to Iran's efforts to develop the Bushehr nuclear power plant in the Persian Gulf, the language I introduced requires the U.S. to withhold proportional assistance to the International Atomic Energy Agency (IAEA) for programs and projects of the Agency that go toward the development of the Bushehr plant if the Secretary of State were to determine that it is inconsistent with US nonproliferation policy, helps Iran develop nuclear weapons expertise, or is a cover of acquisition of sensitive technology. We must keep a watchful eye on IAEA activities in Iran—one of the nations that President Bush singled out as part of the ''axis of evil'' that threatens our way of life. While I have no interest in cutting off all IAEA assistance to Iran, it is ludicrous for the U.S. to support—even indirectly—a plant which clearly poses a threat to the United States and to stability in the Middle East.

Finally, this bill provides language I was glad to sponsor to provide the National Endowment for Democracy (NED) with a modest increase for the first time in years. This vital and cost-effective organization promotes the fundamental American values of democracy and human rights abroad. By leading many efforts in the struggle for freedom worldwide, NED enjoys strong bipartisan support as it advances our national security. From Lech Walesa in Poland to Nelson Mandela in South Africa to human rights activists in Nigeria to civil society leaders in Mexico, NED and it core institutes have assisted grassroots organizations that have helped bring about peaceful transitions to democracy.

Mr. Speaker, despite the outrage committed by the majority on global warming, for the reasons I have mentioned, I urge my colleagues to support this bill.

Mr. ACKERMAN. Mr. Speaker, I rise today in support of the conference report to accompany H.R. 1646, the Foreign Relations Authorization Act.

Mr. Speaker, at the outset, I want to commend Chairman HYDE and Ranking Member LANTOS for their diligent efforts in producing a bill which will truly assist in the conduct of our foreign affairs.

There are a few specific provisions in the conference agreement which I would like to draw attention to. The first is the Middle East Peace Commitments Act. This section requires the President to report to Congress on the Palestinians adherence to their commitments to resolve their conflict with Israel through exclusively non-violent means. If the President cannot report to Congress that the Palestinians are complying with their commitments to peace, and unless the President utilizes a national security waiver, the legislation requires the imposition of one or more of following sanctions: the denial of visas to PLO and Palestinian Authority officials; the downgrading of the status of the PLO office in Washington; the designation of the PLO, the PA, or any of their constituent groups or arms as Foreign Terrorist Organizations; or the cutoff of all non-humanitarian aid to the West Bank and Gaza.

Mr. Speaker, the problem with the U.S. policy to date isn't that we're disengaged—far from it. The problem is that for all our effort, we haven't gotten any commitment to peace from the Palestinians. It doesn't seem to matter how many envoys and senior policy makers the President sends to meet with Palestinian leaders, these visits have failed to produce any change in Palestinian behavior. With the adoption of these sanctions, Congress is sending a strong message to the Palestinians that America's never-ending supply of last-chances has run out.

Another important provision in the conference report concerns Taiwan. Last year, President Bush altered arms sales discussions between the U.S. and Taiwan from once a year to an as needed basis. The experience with this policy has thus far been satisfactory and has removed a major irritant in U.S.-PRC relations by removing the focus an annual meeting between the U.S. and Taiwan provides. However, in order to ensure Congress's historic role in assessing Taiwan's defense needs under the Taiwan Relations Act, the bill requires that the Administration consult with the Congress twice annually regarding Taiwan's defense needs. This provision will ensure that the Congress retains its unique role in determining the types and quantity of defense articles and services that should be provided to Taiwan.

Lastly, Mr. Speaker, the conference report authorizes the final payment of our U.N. arrearage. For too long the late payment of our dues has set an example for other nations to follow and has caused serious budget problems for the U.N. At a time when the President has challenged the United Nations to be a forceful advocate for peace and security, or risk irrelevance, it helps for us to demonstrate that we support the U.N. by putting our money where our mouth is.

Mr. Speaker, I commend Chairman HYDE and Ranking Member LANTOS for their extraordinary work on this measure and I urge my colleagues to support the conference report.

Mr. GILMAN. Mr. Speaker, Section 1601 of the State Department Authorization Conference Agreement addresses nuclear missile nonproliferation in South Asia. I have reservations about the provision. U.S.—India relations are strong and both countries are looking forward to an enhancement and expansion of their economic, political and strategic potential. The engagement between our two nations continues to be mutually beneficial. In light of this tangible bilateral progress being made, and India's long-standing commitment to regional and global peace and security, provisions of Section 601 create an unnecessary diversion in the steadily strengthening bilateral relationship between the U.S. and India.

Mr. LANTOS. Mr. Speaker, I yield back the balance of my time.

Mr. HYDE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Without objection, the previous question is ordered on the conference report.

There was no objection.

The conference report was agreed to.

A motion to reconsider was laid on the table.

## DIRECTING THE CLERK OF THE HOUSE TO MAKE TECHNICAL CORRECTIONS IN THE ENROLLMENT OF H.R. 1646, 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. HYDE. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 483) directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 1648, and ask unanimous consent for its immediate consideration in the House.

The SPEAKER pro tempore. The Clerk will report the current resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 483

*Resolved by the House of Representatives (the Senate concurring)*, That in the enrollment of the bill (H.R. 1646) to authorize appropriations for the Department of State for fiscal

year 2003, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal year 2003, and for other purposes, the Clerk of the House of Representatives shall insert at the appropriate place the following new section (and conform the table of contents accordingly):

**SEC. 1309. THREE-YEAR INTERNATIONAL ARMS CONTROL AND NONPROLIFERATION STRATEGY.**

Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit to the appropriate congressional committees a 3-year international arms control and nonproliferation strategy. The strategy shall contain the following:

(1) A 3-year plan for the reduction of existing nuclear, chemical, and biological weapons and ballistic missiles and for controlling the proliferation of these weapons.

(2) Identification of the goals and objectives of the United States with respect to arms control and nonproliferation of weapons of mass destruction and their delivery systems.

(3) A description of the programs, projects, and activities of the Department of State intended to accomplish goals and objectives described in paragraph (2).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1545

## PROVIDING FOR CONSIDERATION OF H. RES. 540, EXPRESSING SENSE OF HOUSE THAT CONGRESS SHOULD COMPLETE ACTION ON H.R. 3762, PENSION SECURITY ACT OF 2002; H. RES. 544, EXPRESSING SENSE OF HOUSE ON PERMANENCY OF PENSION REFORM PROVISIONS; AND H. RES. 543, EXPRESSING SENSE OF HOUSE THAT CONGRESS SHOULD COMPLETE ACTION ON H.R. 4019, MAKING MARRIAGE TAX RELIEF PERMANENT

Mr. SESSIONS. By direction of the Committee on Rules, I call up House Resolution 547 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 547

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House the resolution (H. Res. 540) expressing the sense of the House of Representatives that Congress should complete action on H.R. 3762, the Pension Security Act of 2002. The resolution shall be considered as read for amendment. The resolution shall be debatable for one hour equally divided among and controlled by the chairmen and ranking minority members of the Committees on Education and the Workforce and Ways and Means. The previous question shall be considered as ordered on the resolution to final adoption without intervening motion.

Sec. 2. Upon the adoption of this resolution it shall be in order to consider in the House the resolution (H. Res. 544) expressing the sense of the House of Representatives on permanency of pension reform provisions. The resolution shall be considered as read for amendment. The resolution shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The previous question shall be considered as ordered on the resolution to final adoption without intervening motion.

Sec. 3. Upon the adoption of this resolution it shall be in order to consider in the House the resolution (H. Res. 543) expressing the sense of the House that Congress should complete action on H.R. 4019, making marriage tax relief permanent. The resolution shall be considered as read for amendment. The resolution shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The previous question shall be considered as ordered on the resolution to final adoption without intervening motion.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, the resolution before us is a closed rule that allows for consideration of three important resolutions. The rule provides for 1 hour of debate, equally divided among and controlled by the respective chairmen and ranking members of the committees of jurisdiction.

Mr. Speaker, the trio of resolutions before us today represents some of the most pressing needs for average Americans across the Nation. In politics, we often try to put a personal face to a problem that is being debated or addressed. Mr. Speaker, the face of our story today is just the average American, the average American who is a family member, a friend, a neighbor. It is a person who has worked hard and tried to invest wisely so that he or she can enjoy a retirement of independence.

The first of these resolutions, House Resolution 540, expresses the sense of the House that Congress should complete action on and present to the President before adjournment the Pension Security Act of 2002.

Although the House passed this measure more than 150 days ago by a strong bipartisan vote, the Senate has not taken up comprehensive pension protection that includes safeguards and options to help American workers preserve and enhance their retirement security.

Over the last year, we have witnessed the unraveling and breakdown of major corporations such as Enron. While Enron workers were likely victims of criminal wrongdoing, there is no question that they were most definitely the victims of outdated Federal pension laws.

The tragedy of Enron was two-fold. In addition to decimating the savings of employees, it has also undermined the confidence of American workers in this country's pension system.

The Pension Security Act includes new options and resources for workers, as well as greater accountability from companies and senior-level executives. Employees would be given new freedoms to sell and diversify company stock. The bill also creates parity between senior corporate executives and rank-and-file workers. This will help to prevent a repeat occurrence of the egregious disparity that allowed Enron executives to sell their investments and preserve their savings while rank-and-file workers were barred from making changes.

The bill also includes provisions that would ensure that employees receive accurate and timely information, along with sound advice and resources to make informed investment decisions. Mr. Speaker, let me be very clear about this: each day that we delay in enacting the Pension Security Act is another day that we leave worker retirement savings vulnerable to corporate meltdowns.

The second resolution we will consider is House Resolution 544, which expresses the sense of the House that Congress should complete work on the Retirement Savings Security Act of 2002. The tax relief package that was enacted last year included provisions that increased contribution limits for IRA and 401(k)-type plans to make it easier for companies, and particularly small businesses, to offer a retirement savings plan.

Currently, half of the Nation's workforce, roughly 70 million Americans, do not have a 401(k) plan or any other kind of pension. At the same time, much of the workforce is quickly approaching retirement. The provision enacted last year addressing this growing concern by allowing all workers to set aside more in their own retirement and IRA plans was important. I am proud of what this House did. Special considerations were also given to workers over 50 years old who were allowed to so-called ''catch up'' or accelerate contributions so that they can build up their retirement nest egg more quickly.

One group that will be particularly helped by this is women, women who come to work many times after raising their children, many times later in life.

This tax relief package also included provisions that modernize pension laws. Workers are now able to enjoy the benefits that come from having a portable defined contribution plan and are also allowed to vest in their plans more quickly.

So one might ask: What is the problem? The problem, Mr. Speaker, is that all of these very good benefits enjoyed by the American worker are set to expire on December 31, 2010, because of an arcane Senate rule. Consequently, Americans will have a difficult time planning for the future.

In order to prevent a massive overnight tax increase, this past June the

House passed a bill that would make these provisions permanent on a strongly bipartisan vote of 308 to 70. The American worker is calling for these reforms to be made permanent, and the President is ready and willing to sign these significant retirement security provisions. We just need to go through the legislative process that involves both parties here in the Capitol. This measure, too, has also not been taken up by the other body.

The last resolution addresses similarly important tax relief that is put in jeopardy by the aforementioned Senate rule. House Resolution 543 is a measure expressing the sense of the House that Congress should complete action on H.R. 4019, making marriage tax relief permanent.

Because of the Senate rule, the provisions that give relief to married couples from an additional tax burden are set to expire at the end of the year 2010. The Senate has not acted on making marriage tax relief permanent. Without enacting a law making marriage tax relief permanent at the start of the year 2011, the nearly 36 million couples in the Nation would be subject once again to this fundamentally unfair tax solely because they are married. If this provision is not made permanent, married couples across America will once again be subject to this unfair tax that is an affront to the most basic institution of marriage.

The Committee on Ways and Means report also notes that ''failure to make permanent marriage penalty tax relief would result in a $17 billion tax increase for low- and middle-income married taxpayers in the year 2011, followed by a $25 billion tax increase in the year 2012.''

Mr. Speaker, I look forward to debate on these three resolutions, which give the House the opportunity to once again reaffirm its commitment to the American workers and their families.

Mr. Speaker, I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. As the Chair most recently ruled on September 19, 2002, Members are reminded to confine their remarks to factual references to the other body and avoid characterizations of Senate rules, Senate action or inaction, remarks urging Senate action or inaction, or references to particular Senators.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, this rule and the three meaningless sense of the House resolutions it will bring to the floor represent a complete abdication of leadership by House Republicans.

On the front page of today's New York Times, the Census Bureau reports that the number of people living in poverty has increased, the median household income has decreased, and Americans are suffering under the weakest economy in 50 years. But congressional Republicans are fiddling about, cynically playing politics in order to run out the clock before the November elections.

The majority leadership should be ashamed of itself, Mr. Speaker. Republicans refuse to do the most basic job that they were elected to do: fund the Federal Government. House Republicans have passed only five of the 13 appropriation bills, and the fiscal year ends in less than 1 week.

Later today, or perhaps tomorrow, or perhaps some day next week, we will pass the first of several continuing resolutions to keep the government operating. But instead of working overtime to do their most fundamental job, Republican leaders are worried about their own political power, so they are wasting time on the meaningless bipartisan propaganda that these resolutions represent.

Never have I seen such timidity, timidity from the Republican leadership. Meanwhile, long-term unemployment is at an 8 percent high, and 2 million Americans have lost their jobs. Consumer confidence is at its lowest level since November of 2001, and prescription drug prices are still sky high, leaving senior citizens unable to afford vital prescription medicine.

Mr. Speaker, corporate scandals, the massive criminality at Enron, WorldCom, and the like have rocked the economy and devastated retirement plans of millions of Americans; but House Republicans overwhelmingly voted against real pension protection legislation a few months ago, blocking Democratic efforts to protect Americans' retirement plans.

Just yesterday, the Dow hit a 4-year low. The NASDAQ is at a 6-year low. Overall, the stock market has lost $4.5 trillion in value since Republicans took control in Washington a year ago January.

How have Republicans responded, Mr. Speaker? Last week they wasted the taxpayers' time and money on two utterly meaningless resolutions. This week they are doing it again, issuing a rule that brings three more utterly meaningless resolutions to the House floor, since we have already passed these bills that are the subject of these resolutions.

Mr. Speaker, in case anyone has any doubt as to the substantive significance of the resolutions on the floor today, let me tell the Members how we got here. Originally, Republicans had one meaningless resolution on the schedule for today. Apparently, however, that would not waste enough time, so in the middle of the Committee on Rules meeting yesterday evening, Republicans happened to mention that they were going to add two more meaningless resolutions. Then they told us that they had to adjourn the committee until the new resolutions had been written.

Mr. Speaker, this is a shameful failure to lead. It demonstrates an embarrassing intellectual bankruptcy on the part of the Republican Party. They have given up on addressing the real priorities of the American people and turned the House floor into a propaganda arm of the Republican National Committee.

In closing, Mr. Speaker, I pose a simple question to my Republican colleagues: Are they afraid to do the job their constituents elected them to do? If not, I urge them to join Democrats in opposing the previous question.

If we defeat the previous question, we will amend the rule to bring to the floor real corporate accountability legislation offered by the gentleman from California (Mr. MATSUI), the ranking member of the Subcommittee on Social Security. The Matsui measure would ensure that big corporations treat their employees the same way they treat their favorite executives: if the CEO gets a guaranteed pension, then so should the front line employees; if the company restricts employees who want to change their 401(k) plans, then it should restrict CEOs who want to cash in their stock options.

The Matsui bill embodies the values that President Bush set forth months ago. If it is good enough for the captain, it is good enough for the crew.

I urge my Republican friends to join us in defeating the previous question so this House can finally address the corporate scams that have hurt so many employees and investors.

By the way, it might be nice if the Republicans would also bring the eight appropriation bills that are still languishing in committee to the floor. They have utterly failed to do the job that they were sent here to do.

Mr. Speaker, I reserve the balance of my time.

□ 1600

Mr. SESSIONS. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina (Mr. BALLENGER), a member of the Committee on Education and the Workforce.

Mr. BALLENGER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, over the last year thousands of Americans employed by Enron, WorldCom, Adelphia and others have watched helplessly as their companies collapsed and their retirement savings evaporated. In response, President Bush called on Congress to act in a bipartisan fashion to restore confidence in our Nation's pension and retirement security system, and I am not ashamed to say more than 150 days ago the House did its part by passing a comprehensive pension protection bill that protects workers from losing their retirement savings in Enron-style corporate meltdowns.

The House passed the Pension Security Act to protect workers' retirements by stopping harmful inside trader moves. It gives workers new freedoms to diversify their retirement savings in 3 years and allows workers to

receive sound investment advice about their retirement plans. American workers deserve no less than this from Congress. And also we need to support a 401(k) continuation and permanent renewal of the marriage penalty. The Senate has not passed any protection bill; and by supporting this bill rule, you are standing up for American workers.

Mr. FROST. Mr. Speaker, I yield 7 minutes to the gentleman from California (Mr. MATSUI).

Mr. MATSUI. Mr. Speaker, I thank the gentleman from the State of Texas (Mr. FROST), the ranking member on the Committee on Rules.

Mr. Speaker, what we are really doing here today is passing three resolutions that the gentleman from Texas (Mr. FROST) said were absolutely meaningless, and I would have to say that they are probably less than absolutely meaningless.

The first resolution deals with a bill that was passed some months ago basically asking that the Senate act on it. Now, the way I would do this is you just go walk over to the Senate side, which takes about 5 minutes, and just suggest that perhaps they bring the bill up, and if they will not bring the bill up ask them why and then you will find out why because the bill that passed the House is somewhat meaningless.

The same thing on the second resolution. You want to make something permanent that will not take effect until 8 years from now. And so why talk about asking the Senate to take this bill up now when we are talking about something 8 years from now? We do not even know how this bill will work.

The last one is on the marriage penalty, again doing something that will take 8 years from now. What is odd is that we should really be addressing the shortfall on Social Security, but because the Republicans want to privatize Social Security, they want to wait until after the elections because they know they are getting really torpedoed on this. They do not want to talk about Social Security. They have a prescription drug proposal that will privatize Medicare and, obviously, that cannot pass the other body because it is so extreme that that is not going to happen.

You can go on and on and on. One of reasons the appropriations bills are not being brought up is even though the President had a wonderful Rose Garden ceremony, signing ceremony, on the education bill, Leave No Children Behind, he falls $7 billion short in actually funding that bill, which would make it impossible to implement it and create chaos in every school district in America.

So we know what is happening. We know why we are spending hours of time on this floor of this body talking about resolutions. The easiest thing in the world, as I said, is just go on the other side. Talk to these people on the other side. Do not send resolutions and waste their time.

What is really offensive is let us take the first piece of legislation that we are talking about, the first resolution. I will tell you how meaningless it is. They have basically two parts of this bill: The Boehner-Thomas bill which is supposed to really address the Enron pension problems. The first one basically says that no employee can actually sell company stock for 3 to 5 years from the date of receipt. Now, that does not mean anything from the top level management employees; the executives like Ken Lay could still sell any time they want. They get a stock option. So this does not really help the employees of these companies.

The second part of it is even more silly when you think about it. The gentleman from Texas (Mr. FROST) talked about investment advice. The only trouble is the investment advice will come from the same people that are administering the program. So you take Enron, it would have been the Enron pension managers that would have been giving investment advice to the Enron employees. Now, what do you think they are going to say? Do not buy Enron stock? Of course not. It is silly.

But you say, we do have a provision that you have to disclose a conflict of interest. Sure, that is a lot of help. That is what this bill does. It is somewhat meaningless. That is why the other body has a rough time wanting to take this up.

The bill I would like to offer and the bill we really should be debating, you can vote against it, but let us bring it to the floor so that the American public will know our values, what we stand for, exactly who does want to solve those problems. What our bill will do is basically, let us take, for example, the whole issue of diversification, the first issue about Enron employees having in their 401(k) plans Enron stock. Essentially what we would provide is that the executive employees like Ken Lay and Skilling and those folks would not be able to sell their stocks if in fact there are impediments to the employees having to sell their stocks. And if they do sell their stocks and breach the general company-wide prohibition in terms of time limits, they would just have to pay a capital gains tax that is larger than the capital gains tax they will pay now. They will have to pay a 50 percent capital gains tax. That should be a disincentive then for them to sell these stocks or at least perhaps open it up so their employees can sell their stocks.

Secondly, we all know what has been going on, and finally I think the Jack Welch situation became public knowledge about a month ago. A lot of retired top executives and CEOs get millions and millions of dollars of perks. Not only do they get wonderful pension programs, but they also get tickets free to sporting games on the front row. They get apartment complexes. They get their cleaning paid for. They get a corporate jet that is waiting for them. Millions of dollars worth of funds.

We know that they get these big benefits and we are not going to stop that. They are going to get them. But what we want is transparency. One of the reasons the market is falling apart, it was 11,700 when the President took office, and now it is down to 7,700. It lost 4,000 points in the last 2 years since President Bush has been President, about a 40 percent reduction in pension benefits.

The reason why there is no confidence in the stock market today is because there is no transparency, because the shareholders do not know what is actually being expensed. The shareholders of GE did not know that Jack Welch was actually spending millions and millions of dollars of monies that could have gone in the form of stock dividends. All we would do is just provide that when you give these benefits and perks to these top management people, that you notify the shareholders in writing. And then you allow the shareholders to vote as to whether or not they agree with it; and if they do not, these perks are not available. Very simple.

Why would anybody be opposed to that? You want transparency, you want fairness, and you want the shareholders to have their benefits. We cannot bring this bill on the floor because you, Republican leadership, will not allow us to. The American public needs to know that. Why should we not be allowed to do that?

Lastly, the whole issue of deferred compensation. Ken Lay did really well. After bankruptcy was filed, he was able to take millions of dollars in deferred compensation. You know why he was able to do it? Because he put it in a third party trust that was nontaxable to him; nontaxable trust monies of Enron money went into a third party trust. And when they filed bankruptcy, every employee of Enron corporation lost their 401(k)s and went from $100,000 to zero or whatever they had went down to zero. It was suffering, what these people went through. Ken Lay walked off with it. You know why? Because we have a provision in the Tax Code that needs to be changed because it allows a deferral of taxes, and at the same time with the third party trust he was able to take literally millions of dollars from his account.

We need a no vote on the motion on the previous question so we are able to bring up our legislation that will deal with these major points so the American public and the shareholders will understand exactly what is going on in corporate America.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Members are reminded to avoid improper references to the Senate.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we were furthering this debate that we have had

for quite some time. I completely understand where the Democrats are coming from. They completely understand where we are coming from. We would like an agenda that is going to help taxpayers. We want an agenda that will help investors. We want an agenda that will help this country to come back from the problems that it has had. But the bottom line is the consensus that these bills have represented, including just one of these bills, got 308 votes. It is a consensus about doing something that will work.

I understand how difficult it is to beat up the status quo, just beat it up. But the answers that the other side has, just like when they present their budget, it does not even come close to passing. The measures that they have time after time do not come close. But the provisions that we have put on the floor have virtually bipartisan agreement with over 308 people who vote for it.

These are the ideas that we bring back to the floor today. The ones that have received over 300 votes of this body, the votes that make a difference, the ideas that make sense. It is easy beating up these ideas. I understand that. I also understand a lot of the frustration that they have got. But now is the time for us to make sure that we are pushing these. These three provisions are important. Yes, it is true. Two of them simply make permanent the things at the end of 10 years that we passed in the past few years. But I believe they are very important and I believe they represent more than a consensus of this body. And that is why it makes sense that what we passed previously, that we will debate again.

Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. PORTMAN), a member of the Committee on Ways and Means.

Mr. PORTMAN. Mr. Speaker, I thank my colleague from Texas (Mr. SESSIONS) for yielding me time; and I am pleased to talk about today the substance of some of the legislation before us.

The rule permits us to take up three bills. My understanding is today we will address two of them. They have just been mischaracterized in my view by my colleague from the other side of the aisle, and I just want to relate what they actually contain.

The first is H.R. 3762. This is the pension security bill. It passed the House with a vote of 255 to 163 with 46 Democrats supporting it. It does have a controversial amendment with regard to independent investment advice, but to say that it does nothing, which my colleague and friend from California (Mr. MATSUI) said earlier, is not accurate. Let me tell you just what it does.

It says to people who are currently in company plans who have 401(k)s, who get a match of stock from their employer, that they do not have to be in that stock for an unlimited period of time. Under current law if an employer wants to they can give a match under a 401(k) program and say, you can have that stock but you have got to keep it, and you can never get rid of it, because there is no current rule which says that employees, the workers, have the right to unload that stock. That is a bad situation.

What happened at Enron is they told people they had to be 50 years of age plus they have to have 10 years of service. So people literally got hold of that Enron stock and they did not have the ability to get it out of their retirement plan. That is current law. Enron could have said 65 instead of 50. They could have said 20 years of service. They chose 50 and 10.

So what this House did on a bipartisan basis is we said, Let us change these rules. Let us say that as soon as you are vested, and vesting is after 3 years of service, that is the current vesting rule. We moved it from 5 years down to 3 years in the Portman-Cardin legislation a couple years ago. As soon as someone is vested after 3 years, you can get rid of that stock. You can divest yourself of that corporate stock that that company has given you as a match. That is a huge difference. And to say that does nothing I think not only mischaracterizes the bill, but I think that is really unfair to the workers of America who want to have that flexibility. They want to have the choice. If they want to keep that stock, fine, they should be able to. But they should also have the choice to get out of it. And a lot of folks at Enron would have gotten out of it. So that is a big change from current law.

It is not something, frankly, the business community was wild about because they like the idea of giving corporate stock and tying people to that stock because they think that gives people more of a stake in that company. It enables them to have that stock be held. But we looked at it. We said it was fair. We decided to do it. The gentleman from Maryland (Mr. CARDIN) and I worked on that. The gentleman from North Dakota (Mr. POMEROY) and I worked on that and others. So to say it does nothing is just inaccurate.

Second, it provides better information to workers. That is something we agreed to on a bipartisan basis. It was not a controversial part of the bill. It does provide a lot more information and better information. For instance, now when somebody gets into a plan they have to be provided with advice that says diversify. Do not put all your eggs in one basket. A commonly accepted principle for retirement is you should not have all your eggs in one basket. People now have to be told that when they get into a plan. They also have to be told, not only when they get into it but on a quarterly basis, what that plan is doing.

□ 1615

That was not a requirement before this legislation. If we could get this out of the Senate, people would actually get quarterly statements telling them what is in their plan, what they have, how the plan is doing in plain English so they can actually have the kind of transparency that the gentleman from California (Mr. MATSUI) talked about, and I could not agree with him more. Transparency is absolutely critical.

Finally, education. Choice and information are important, but we also need to give people more tools to be able to educate themselves about how to invest their retirement savings. I think there is a consensus on doing that. There is some controversy about one element here, but it is extremely important.

There are two provisions in the bill. One says that one should be able on a pretax basis to go out and get advice wherever one wants, up to 500 bucks. Just like one can get a pretax cafeteria plan for eyeglass coverage or some other benefit, one can get investment advice. Investment advice is not cheap. So it is important that people have the ability to go out to get that advice. That is something that the gentleman from Maryland (Mr. CARDIN) and I have put together in previous legislation; it is something this House passed.

Finally, it says that companies ought to be able to allow people to come into the company and provide advice to the employees. The employer has the option to do that under this bill. It is voluntary. If the person comes forward to offer advice, the person has to disclose whatever that person is doing including being involved in a company plan, if they are. It is subject to all fiduciary responsibilities that come with that. It has to be a certified individual. So their protection is in there, but the point is there are millions of American workers today, over 42 million of them are in 401(k)s and a lot of them are getting no advice at all. In fact, 65 percent of those workers tell us they want to get education. So this is what this bill does. It is pretty simple. It says people ought to have choice. They do not have it now. And until the Senate acts, they will not have it. They ought to have better information about their plan. They ought to have better education.

A couple of other really good provisions of the bill have already been passed in the corporate accountability bill. That dealt with the blackout period. Do my colleagues remember that issue with the Enron situation because they were changing plan administrators, there was a blackout where people could not sell their stock and yet the people at the top could and there was no notice of the blackout? This House passed legislation that is part of this bill that says 30-day notice, they have to tell people about a blackout and during the blackout, the corporate executives who are not even in the plan but have stock separately cannot sell their stock. What is good for the sailor is also good for the ship captain. That was that idea and that did pass as part of the corporate accountability bill,

but it came out of this House and out of this legislation.

So what we are doing today may seem meaningless to some, but I think it is very important because it is important to the workers of America. It is to say to the United States Senate, look, we passed this thing back in April. We responded on a bipartisan basis in the House. It is time now for the United States Senate to help America's workers. Enough talk. We have got a bipartisan consensus on which way to go. We ought to get it done.

The second piece of legislation has to do with enabling people to put more in their retirement accounts, enable them to move their accounts from job to job, portability, and simplifying the rules for small business so that they can offer more accounts. We know for a fact that of the 75 million people in America who do not have any retirement savings plan at all, 75 million people are left out right now. Most of them work in small business. In fact, among small businesses, only 20 percent offer any kind of plan like a 401(k) or a similar plan. So this House, on a 308 to 70 vote and in the past on a 400 vote, passed this legislation.

And what we are saying here is we ought to now make that legislation permanent. It lets everybody save more for their retirement. It is good policy. It is already working. IRA contributions are up 25 percent this past year, and thank goodness, because some of that money is accounted for now and able to balance some of what is happening in the markets so that people have a little more retirement savings. So it is out there working. It is good policy.

Why do we think it ought to be made permanent? Because although it does not expire for 8 years, it is very difficult to plan. Most Americans are trying to plan for their retirement. They want to know that this thing is not going to expire in 8 years, which it does under the current legislation. Small businesses would like to plan. If someone is thinking about getting into a pension plan for the first time if they are one of those 80 percent of small businesses, Mom and Pop operations, and they are sort of scared about the cost and the burden of liabilities to this, we reduce some of these for them here but they are saying, gee, how do we know that if we get into this business we are not going to get knocked out of it in 8 years? We ought to make it permanent.

I hope this is something this House would agree on. We already had a vote on that in this House. All we are saying to the Senate is, please, instead of talking about this so much, let us do something. We have the ability to do something. We have a consensus on how to help every worker have a more secure retirement.

There may be other things that people would like to add. The gentleman from California (Mr. MATSUI) has talked about executive compensation. Those are important issues. We ought to address those issues. It will not help one person get a pension, I can tell you that. So let us focus on what we are about here, which is helping workers to be able to have a little nest egg for their retirement, have a little peace of mind so that when they retire, they have something to be able to use for their own retirement and pass along to their kids and grandkids. That is what we are doing today. It is very simple. I appreciate the time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Members are reminded to avoid improper references to Senators.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

I was listening to my colleague, the gentleman from Texas, a while ago; and he was talking about why we need to be voting on this today, and I think he is a little confused. I do not know, maybe he was sick the day they did the legislative process during freshman orientation. I do not know. But it sounded like he was talking about voting on a conference report. We do not have a conference report before us. We have a bill that has already passed the House, has not been taken up by the Senate. So it is meaningless to vote a second time on the same bill that has already passed the House when it has not been passed by the Senate, has not gone to conference, and has not come back to us. So this really is an extraordinary waste of everybody's time, the minority's time, the majority's time, and the taxpayers' time and money.

Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Speaker, I thank the gentleman from Texas (Mr. FROST) for yielding me this time.

Mr. Speaker, I strongly support worker protection in the pension laws, but today is another wasted opportunity, another loss of an opportunity to do something positive in that direction. I strongly disagree with the partisan strategies of my Republican colleagues. We need Congress to act on pension protection. It has been a pleasure to work with the gentleman from Ohio (Mr. PORTMAN) on many of these pension issues. Yes, employees should have control over their assets in the 401(k) plan.

Yes, we need to give them advice on diversification and independent advice; and yes, we have to give them notice of blackout periods. All that is very important, but this rule, as the gentleman from Texas (Mr. FROST) has pointed out, if it passes, will allow us to consider on this floor three meaningless resolutions. They do not even reenact what we did before. These are basically political statements more than action on the floor of this body.

Instead, we could have done something here today to make it more likely we would send legislation to the President accomplishing what we are talking about today. We still have that opportunity. If we defeat the previous question, then we will be able to bring forward an issue that is extremely important to the workers of this Nation, will help bring us closer to the other body and more likely that we will get legislation enacted this year.

Mr. Speaker, I refer to the fact that under current pension law, there is preferential treatment for top management over the rank-and-file workers of a defunct company. No one can justify that. If a company cannot pay its workers, if a company cannot pay its creditors, it should not be paying these lucrative agreements to its top management, the deferred compensations and the unqualified pension plans that allow these payments to continue even though the company is in bankruptcy; and that is what the gentleman from California (Mr. MATSUI) is referring to. That is what we will be able to consider in this body if we defeat the previous question; and if we do that, we will not only be enacting the right policy, treating workers equally with top management and protecting their pension rights, but we also will make it more likely that we can get legislation enacted this year.

I urge my colleagues to listen to this debate. Why we continue to take up these resolutions that do absolutely nothing is beyond me. These are important issues. We all want to help workers. So why can we not use the time that is obviously available to us to do the work we have not done yet? We have not taken up the issue of protecting the rank and file versus the top management. Let us take that issue up during this time.

I urge my colleagues to defeat the previous question.

Mr. SESSIONS. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. WELLER), the sponsor of the Marriage Penalty Relief Act.

Mr. WELLER. Mr. Speaker, I thank the gentleman from Texas (Mr. SESSIONS) for yielding me this time.

I rise in strong support of the rule. I urge a ''yes'' vote on the previous question because this is a pretty simple debate before us today. We are debating bringing up a measure that says we need to get our work done on making elimination of the marriage tax penalty permanent; and before I discuss this marriage tax penalty, I do want to commend my friend, the gentleman from Ohio (Mr. PORTMAN), and the gentleman from Ohio (Mr. BOEHNER) for their good work on the pension legislation that is also part of this rule debate, particularly for the inclusion of the 415 pension provisions which benefit over 10 million construction and building trades people across America.

Thankfully, President Bush had the leadership to sign that legislation into law; and unfortunately, it was a temporary measure, and just imagine what it would mean to working folks back home in our districts if the rug were pulled out from them if that provision

were allowed to expire, what it means for a laborer in my district like Larry Core. That 415 provision means a doubling of his pension by removing those artificial caps that denied him the full pension that he earned and deserved.

I have often, like many of my colleagues, come to the floor and asked the very fair and basic issue of fairness, and that is, is it right, is it fair that under our Tax Code almost 42 million married working couples have suffered higher taxes historically just because they are married? It does not seem right, and it does not seem fair; but the average marriage tax penalty would be about $1,700.

Thankfully, this House, along with the Senate, and we obtained bipartisan support, succeeded in passing as part of the Bush tax cut legislation to eliminate the marriage tax penalty, helping 42 million married working couples, couples such as Jose and Magdalena Castillo, two laborers, two construction workers from Joliet, Illinois. They have a son and daughter, Eduardo and Carolina. They are good people. They work hard. They are pursuing the American dream, but they suffered the marriage tax penalty prior to President Bush signing the Bush tax cut into law.

Unfortunately, the Bush tax cut is temporary. It expires in a few years, so what that means for a couple such as Jose and Magdalena Castillo, who right now have the marriage tax penalty essentially eliminated, is they could end up paying in a few years about $1,700 more in higher taxes just because they are married; and I believe that there is bipartisan agreement in this House that it is wrong that a married couple who are both in the workforce, man and wife, should pay higher taxes. We saw that we had almost 60 Democrats join with every House Republican that rejected their leadership's call, and they voted with us in eliminating that marriage tax penalty.

We have before us today a rule which will allow us to bring up this coming week a measure which will say that we want to complete before the end of this year, making permanent the elimination of the marriage tax penalty, and this House has passed legislation to make permanent the elimination of the marriage tax penalty; and I would note that the Senate has not taken up permanency when it comes to eliminating the marriage tax penalty legislation that the House passed months ago. I think it is important that we make this a bipartisan priority.

We have that opportunity today, because think about it, for Jose and Magdalena Castillo of Joliet, Illinois, two hardworking people who have suffered the marriage tax penalty, just like 42 million American working couples, unless we make permanent the elimination of the marriage tax penalty, they are going to once again suffer higher taxes just because they are married.

We have a simple vote before us. We are voting on a rule. It is a procedural thing that we have to do, but this rule will allow us to debate the need to finish our job on eliminating the marriage tax penalty permanently; and, again, I would note that this House passed, and the votes of every House Republican and about 60 Democrats joined with us in a bipartisan effort, to eliminate the marriage tax penalty. I urge a ''yes'' vote on the rule and a ''yes'' vote on the previous question.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. NEAL).

Mr. NEAL of Massachusetts. Mr. Speaker, I thank the gentleman from Texas (Mr. FROST) for yielding me the time.

Today, Mr. Speaker, we are considering more resolutions without meaning. What was great about the Seinfeld show, a show about nothing, is not so funny here in Congress when we debate bills about nothing. These empty resolutions seek to divert attention of the American voters from the Republican leadership's mediocre attempt at pension and corporate reforms.

What we should be debating today is actual legislation that deals with the important issues of pension reform and corporate accountability. My colleagues may recall, Mr. Speaker, that the first economic stimulus bill that the leadership pushed through this House, and my friend from Ohio made reference to Ma and Pa businesses they want to help, would have given $254 million with repeal of the corporate alternative minimum tax to Ma and Pa Enron.

□ 1630

Well, in the wake of Enron's spectacular demise, this House has done little to help those who were financially devastated as shareholders and workers. Pension security deserves serious debate. Establishing parity between corporate executives and rank-and-file employees regarding the buying and selling of stock is simply the right thing to do. It is imperative to strengthening the integrity and public trust in corporate America. Congress has that opportunity if we would just get to it.

President Bush, a former corporate executive himself, said, ''If it is okay for the captain, it ought to be okay for the sailor.'' Instead of debating senseless senses of the House, we should correct this system that unfortunately allowed hardworking Americans, the backbone of corporate America, to lose their retirement savings.

What we are continuing to allow by wasting our time on these resolutions is abusive corporate perks. Let us start with our friends at GE, the quintessential corporate manager who was receiving exorbitant perks at shareholders' expense and most importantly, without shareholder approval. I call Members' attention to the enviable list of perks ranging from big-ticket items to minutia, from a $15 million Manhattan apartment, to corporate jets, to membership fees at four country clubs, to sports tickets, and even expensive toiletries. It is interesting why a man whose wealth has been estimated at $900 million would feel it necessary to have the shareholders of GE pay for his laundry service.

How about the ousted CEO of Tyco, formerly of New Hampshire and now of Bermuda. Without shareholder approval, the company paid for a bizarre set of perks, including $2 million on a birthday party for his wife, $15,000 for a dog umbrella stand, and how about $445 for a pin cushion.

The CEO of Adelphia, he used company funds to construct a $13 million golf course on family property. The holidays must have been very good there.

These extravagances reflect a corporate culture gone awry. Warren Buffet summed it up best when he said, ''The ratcheting up of compensation has become obscene.'' But rather than taking up legislation to prevent or discourage such financial abuse of shareholders and investors, we debate resolutions about nothing.

Mr. Speaker, I want to join the gentleman from California (Mr. MATSUI) in urging this House to take up his legislation which would bring some sanity into the corporate compensation process. We need better protections for our investors, shareholders and workers. How can anybody look at those shareholders and employees at Enron and justify what happened to them?

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, the gentleman from Texas (Mr. FROST) said this is a meaningless resolution. I beg to differ with the gentleman; I think this resolution is very meaningful because it shows that the majority in the face of real economic stress and pain in our country is more interested in positioning for the election that is coming in 6 weeks than it is in solving the country's problems.

Since the beginning of 2001, 2 million people have gone on the unemployment rolls. In the last 12 months, 1 million people have exhausted their economic unemployment benefits, have seen them run out. Since the beginning of 2001, the stock markets have seen $4.5 trillion of wealth evaporate, much of that wealth in the pension funds of American workers, American retirees.

We have seen the equity markets themselves lose 40 percent of their value. We have seen the spread between short- and long-term interest rates, a key indicator of future happenings in our economy, grow wider than it has in recent history. We have seen a Federal Government that was bringing in $108 for every $100 that we spent at the beginning of 2001, now bringing in $90 for

every $100 that we spend, and covering the difference by borrowing from the Social Security trust fund, running the government on Social Security money that should be there for the future.

The right thing to do would be to renegotiate the country's budget, to bring to this floor legislation that would really make a difference to the people that have been stressed, an extension of unemployment benefits for people who cannot find work, a means of creating more jobs in the short run for people who cannot find work, provisions that would truly strengthen pension plans, and one of those provisions can be brought to the floor if Members vote ''no'' on the previous question, and that is the idea of the gentleman from California (Mr. MATSUI), which says that a self-regulating concept in pension plans will be that whatever the top guy in the organization gets, everybody else has to get, too. If there is a restriction on what can be done with stock that applies to the person who cleans the office at night, then it applies to the person who owns the office building. If there are benefits for the person high up in the executive suite, a similar kind of a benefit has to apply to every single man and woman who stands under that person on the company's organizational table.

This is a real change that would make a real difference at a time of real problems. I regret that what we are going to do if the majority passes this rule is pass a couple of ceremonial resolutions to take note of what we wish the other body would do. We cannot control what the other body does. It has a conscience and a rhythm all of its own. That is what the framers intended. However, we ought to do something rather than nothing.

Mr. SESSIONS. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and the Workforce.

Mr. BOEHNER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, over the course of this past year, we have watched employees of Enron and WorldCom and other companies watch their retirement savings dwindle to almost nothing. The House in a bipartisan way came together on April 11, 160 days ago, to pass the Pension Protection Act which will in fact help protect all pensions in America. Yet the Senate has not acted.

Now the Senate did in fact act along with the House when we passed the Corporate Accountability bill to put those corporate insiders who have abused their shareholders and abused the law and put them in jail. In that bill, I might add, there were two provisions from the Pension Security Act actually signed into law. One, a provision that would bar company insiders from selling their stock during a blackout period where the plan administrator is changing.

Secondly, in the Corporate Accountability bill, we do require that pension plan administrators notify their employees 30 days in advance of any blackout period. But we all know there is a lot more that needs to be done. We need to give workers more freedom to diversify their 401(k) accounts. We need to make sure that workers have access to high-quality investment advice. But the House cannot do it alone.

We all know under the Constitution that before a bill can become law and go to the President's desk, it has to be acted on by the House; it has to be acted on by the other body. Any differences have to be resolved before the bill goes to the President. The House has acted. The Senate has yet to take up pension legislation, and I believe this issue is one thing that needs to be done.

We have to remember that this bill, the Pension Security Act, passed the House with 46 Democrat members voting for it. We worked in a bipartisan way to make responsible reforms that really would in fact protect the pension assets of many of our employees. But we cannot get this bill to the President's desk until we have action. That action needs to occur, and it needs to occur now.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when people who are watching this on television, maybe listening to us on the radio, perhaps following these proceedings in the newspaper tomorrow, when members of the public get their quarterly 401(k) statements next week and the statements from their mutual funds, think of the Republicans when you open that up. Think of the Republicans and what they have not done and what they are not willing to do to improve the economy.

They are not willing to bring any legislation to the floor today that makes any difference. They bring meaningless resolutions. I urge members of the public, think of my friends on the Republican side when you open your quarterly 401(k) statement next week.

Mr. Speaker, the majority should be ashamed to bring these sense of Congress resolutions to the floor. These resolutions are pieces of paper that do nothing, help no one, and waste the time of the House of Representatives. No wonder the American people are cynical about their government. Mr. Speaker, I would be, too, if this is the best the majority can produce.

If there is any Member on the majority side who wishes to pass some actual legislation, they should join us in defeating the previous question of the rule. If that occurs, then I will offer an amendment that provides immediately after the House passes this meaningless rule, it will take up a bill that contains real corporate welfare reforms. While the Republican majority is busy indulging their aversion to passing actual legislation so close to an election, Democrats want to crack down on corporate executives who get cheap leases for their corporate jets while their company's 401(k) plan collapses. The majority allows these executives to shield their earnings and retire to their penthouses and benefits for life, while the American people are left playing for this largess.

This is wrong, Mr. Speaker. Democrats know it and are willing to do something about it, while the Republicans pretend these problems do not exist. I do not know about anybody on the other side, Mr. Speaker, but Democrats want to work. We are elected to help make things better for the American people, not to stall legislation we were afraid would hurt us with our big donors too close to an election time.

By defeating the previous question, the House can take up this bill and stop the two classes of people we now have in this country: executives who walk away with millions and live the life of luxury, and the rank-and-file worker who goes home every day hoping their 401(k) plan will last until retirement.

Mr. Speaker, Members, all a ''yes'' vote does is waste time, and Congress has done enough of that for the past 3 weeks. Let us actually pass something that matters. Let us get some work done. I urge a ''no'' vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. FROST. Mr. Speaker, I yield back the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we promised at the beginning of this debate on the rule that it would be contentious, that we understood that the Democrat Party opposed what we were doing, and we understood what we were supporting. We believe what we are talking about here is good for investors. We believe it is good for people to have 401(k)s, pension plans, the opportunity to save more money.

We have had a chance to debate these important issues. We have had any number of speakers on both sides of the aisle who have talked about the things that are good and bad about these resolutions that we are talking about; but the bottom line is that Members will get a chance to vote now after hearing this debate.

Mr. Speaker, I think the previous question will pass, that we will pass these resolutions, that the vast majority of Members will understand what we are doing, the importance to the American people, and the importance to people who are trying to make a go of it with their own savings account.

□ 1645

I think the American public understands what we are doing, and I think they understand what the Republican Party stands for.

The material previously referred to by Mr. FROST is as follows:

PREVIOUS QUESTION FOR H. RES, 547—RULE ON H. RES. 540 SENSE OF THE HOUSE THAT THE CONGRESS SHOULD COMPLETE ACTION ON H. RES. 3762, THE PENSION SECURITY ACT OF 2002, H. RES. 543 SENSE OF THE HOUSE THAT CONGRESS SHOULD COMPLETE ACTION ON H.R. 4019, MAKING MARRIAGE TAX RELIEF PERMANENT AND H. RES. 544 SENSE OF THE HOUSE OF REPRESENTATIVES ON PERMANENCY OF PENSION REFORM PROVISIONS

At the end of the resolution add the following new sections:

SEC. . Notwithstanding any other provision in this resolution, immediately after disposition of the resolution H. Res. 540, the Speaker shall declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5432) to amend the Internal Revenue code of 1986 with respect to the amount included in gross income by reason of personal use of corporate property, to require the same holding period for company stock acquired upon exercise of options as is applicable to company stock in its 401(k) plan, to require disclosure to shareholders of the amount of corporate perks provided to retired executives, and to provide parity for secured retirement benefits between the rank and file and executives. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. . If the Committee of the Whole rises and reports that it has come to no resolution on the bill, then on the next legislative day the House shall, immediately after the third daily order of business under clause 1 of rule XIV, resolve into the Committee of the Whole for further consideration of that bill.

H.R.—

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

**SECTION 1. SPECIAL RULES FOR EXECUTIVE PERKS AND RETIREMENT BENEFITS.**

(a) IN GENERAL.—Part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end the following new subpart:

''SUBPART F—SPECIAL RULES FOR EXECUTIVE PERKS AND RETIREMENT BENEFITS

''Sec. 420A. Holding period requirement for stock acquired through exercise of option.

''Sec. 420B. Additional tax on nondisclosed retirement perks.

''Sec. 420C. Inclusion in gross income of funded deferred compensation of corporate insiders.

''Sec. 420D. Definitions and special rule.

**''SEC. 420A. HOLDING PERIOD REQUIREMENT FOR STOCK ACQUIRED THROUGH EXERCISE OF OPTION.**

''(a) IN GENERAL.—In the case of a corporate insider with respect to a corporation, the tax imposed by this chapter on a corporate insider for any taxable year shall be increased by 50 percent of the amount realized by such insider from the disqualified disposition during such year of stock acquired by the corporate insider upon the exercise of a stock option granted by the corporation with respect to which such individual is a corporate insider.

''(b) DISQUALIFIED DISPOSITION OF STOCK.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'disqualified disposition of stock' means any sale, exchange, or other disposition of stock which, if such stock were employer securities held in a qualified cash or deferred arrangement (as defined in section 401(k)(2)), would violate any restriction imposed on the sale or other disposition of such securities by the plan of which such arrangement is a part.

''(2) SPECIAL RULE FOR 2 OR MORE CASH OR DEFERRED ARRANGEMENTS.—If a corporation has more than 1 qualified cash or deferred arrangement (as so defined), the restrictions which apply for purposes of paragraph (1) shall be the most restrictive provisions relating to the disposition of employer securities held pursuant to any such arrangements.

**''SEC. 420B. ADDITIONAL TAX ON NONDISCLOSED RETIREMENT PERKS.**

''(a) IN GENERAL.—In the case of a publicly traded corporation, the tax imposed by this chapter for the taxable year shall be increased by 50 percent of the net cost to the corporation for the taxable year of personal perks provided to a retired executive of the corporation.

''(b) WAIVER IF PERKS PROVIDED PURSUANT TO SHAREHOLDER APPROVAL.—Subsection (a) shall not apply with respect to any personal perks provided pursuant to a contract if—

''(1) all of the material terms of such contract (including a description of the benefits to be provided to the executive and the extent of such benefits) are disclosed to shareholders, and

''(2) such contract is approved by a majority of the vote in a separate shareholder vote before any benefits are provided under the contract.

''(c) NET COST OF PERSONAL PERKS.—

''(1) IN GENERAL.—For purposes of subsection (a), the net cost of personal perks provided to a retired executive is the excess of—

''(A) the cost to the corporation of such perks, over

''(B) the amount paid in cash during the taxable year by the executive to reimburse the corporation for the cost of such perks.

''(2) PERSONAL PERKS.—For purposes of paragraph (1), the term 'personal perks' means—

''(A) the use of corporate-owned property,

''(B) travel expenses, including meals and lodging, unless such expenses are directly related to the performance of services by the executive for the corporation and the business relationship of such expenses is substantiated under the requirements of section 274,

''(C) tickets to sporting or other entertainment events,

''(D) amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose, and

''(E) other personal services, including services related to maintenance or protection of any personal residence of the executive.

''(3) COST RELATING TO USE OF CORPORATE-OWNED PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The cost taken into account with respect to the use of corporate-owned property shall be the allocable portion of the total cost of operating such property.

''(B) ALLOCABLE PORTION.—For purposes of subparagraph (A), the allocable portion of total cost is—

''(i) the portion of the total cost (including depreciation) incurred by the corporation for operating and maintaining such property during the corporation's taxable year in which such use occurred,

''(ii) which is allocable to the use (determined on the basis of the relationship of such use to the total use of the property during the taxable year).

**SEC. 420C. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS.**

''(a) IN GENERAL.—If an employer maintains a funded deferred compensation plan—

''(1) compensation of any corporate insider which is deferred under such funded deferred compensation plan shall be included in the gross income of the corporate insider or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

''(2) the tax treatment of any amount made available under the plan to a corporate insider or beneficiary shall be determined under section 72 (relating to annuities, etc.).

''(b) FUNDED DEFERRED COMPENSATION PLAN.—For purposes of this section—

''(1) IN GENERAL.—The term 'funded deferred compensation plan' means any plan providing for the deferral of compensation unless—

''(A) the employee's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

''(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan), and

''(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer's general creditors at all times (not merely after bankruptcy or insolvency).

Such term shall not include a qualified employer plan.

''(2) SPECIAL RULES.—

''(A) EMPLOYEE'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(A) unless—

''(i) the compensation deferred under the plan is payable only upon separation from service, death, disability, or at a specified time (or pursuant to a fixed schedule), and

''(ii) the plan does not permit the acceleration of the time such deferred compensation is payable by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income on the earliest date that there is no substantial risk of forfeiture of the rights to such compensation.

''(B) CREDITOR'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(B) with respect to amounts set aside in a trust unless—

''(i) the employee has no beneficial interest in the trust,

''(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

''(iii) there is no factor that would make it more difficult for general creditors to reach the assets in the trust than it would be if the trust assets were held directly by the employer in the United States.

Except as provided in regulations prescribed by the Secretary, such a factor shall include the location of the trust outside the United States.

''(c) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

''(B) any other plan of an organization exempt from tax under subtitle A.

''(2) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement.

''(3) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(4) TREATMENT OF EARNINGS.—Except for purposes of subsection (a)(1) and the last sentence of (b)(2)(A), references to deferred compensation shall be treated as including references to income attributable to such compensation or such income.

**''SEC. 420D. DEFINITIONS AND SPECIAL RULE.**

''(a) DEFINITIONS.—For purposes of this subpart—

''(1) CORPORATE INSIDER.—The term 'corporate insider' means, with respect to a corporation, any individual—

''(A) who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(B) who would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(2) RETIRED EXECUTIVE.—The term 'retired executive' means any corporate insider who is no longer performing services on a substantially full time basis in the capacity that resulted in being subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

''(3) PUBLICLY TRADED CORPORATION.—The term 'publicly traded corporation' means any corporation issuing any class of securities required to be registered under section 12 of the Securities Exchange Act of 1934.

''(4) CORPORATE-OWNED PROPERTY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'corporate-owned property' means any of the following property owned by a corporation—

''(i) planes,

''(ii) apartments or other residences,

''(iii) vacation, sports, and entertainment facilities, and

''(iv) cars.

Such term includes any such property which is leased or chartered by the corporation.

''(B) EXCEPTIONS.—Such term does not include any property used directly by the corporation in providing transportation, lodging, or entertainment services to the general public.

''(b) ADDITIONS TO TAX NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The tax imposed by sections 420A and 420B shall not be treated as a tax imposed by this chapter for purposes of determining—

''(1) the amount of any credit allowable under this chapter, or

''(2) the amount of the minimum tax imposed by section 55.''.

(b) CLERICAL AMENDMENT.—The table of subparts for part I of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

''Subpart F. Special Rules for Executive Perks and Retirement Benefits.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as follows:

(1) Section 420A of the Internal Revenue Code of 1986 (as added by this section) shall apply to stock acquired pursuant to the exercise of an option after the date of the enactment of this Act.

(2)(A) Except as provided by subparagraph (B), section 420B of such Code (as so added) shall apply to perks provided after the date of the enactment of this Act.

(B) In the case of perks provided pursuant to a contract in existence on the date of the enactment of this Act, such section 420B shall apply to such perks after the date of the first annual shareholders meeting after the date of the enactment of this Act.

(3) Section 420C of such Code (as so added) shall apply to amounts deferred after the date of the enactment of this Act.

Mr. SESSIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of agreeing to the resolution.

The vote was taken by electronic device, and there were—yeas 217, nays 200, not voting 15, as follows:

[Roll No. 413]

YEAS—217

Aderholt
Akin
Armey
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
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Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
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Wolf
Young (FL)

NAYS—200

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (TX)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Skelton
Slaughter

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|---|---|---|
| Smith (WA) | Taylor (MS) | Watson (CA) |
| Snyder | Thompson (MS) | Watt (NC) |
| Solis | Tierney | Waxman |
| Spratt | Towns | Weiner |
| Stark | Turner | Wexler |
| Stenholm | Udall (CO) | Woolsey |
| Strickland | Udall (NM) | Wu |
| Stupak | Velazquez | Wynn |
| Tanner | Visclosky | |
| Tauscher | Waters | |

NOT VOTING—15

| | | |
|---|---|---|
| Bachus | Mascara | Roukema |
| Bonior | McDermott | Stump |
| Borski | McKinney | Thompson (CA) |
| Callahan | Mink | Thurman |
| Maloney (NY) | Radanovich | Young (AK) |

□ 1733

Messrs. BRADY of Pennsylvania, WU, and BAIRD changed their vote from ''yea'' to ''nay.''

Mr. GARY G. MILLER1 of California and Mr. HEFLEY changed their vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## SENSE OF HOUSE THAT CONGRESS SHOULD COMPLETE ACTION ON H.R. 3762, PENSION SECURITY ACT OF 2002

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 547, I call up the resolution (H. Res. 540) expressing the sense of the House of Representatives that Congress should complete action on H.R. 3762, the Pension Security Act of 2002, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

H. RES. 540

Workers with stronger pension protections and greater access to professional investment advice;

Whereas a bipartisan majority of the House of Representatives passed H.R. 3762, the Pension Security Act of 2002, on April 11, 2002, by a vote of 255 to 163;

Whereas the Pension Security Act of 2002 would provide working Americans with more investment education and information regarding their retirement plans, greater access to professional investment advice, rights to diversified pension plan assets, protections against corporate abuses and mismanagement of pensions, and other reforms that would increase pension coverage;

Whereas the pension protections and reforms contained in the Pension Security Act of 2002 would enhance the retirement security of American workers; and

Whereas the Senate has not passed the Pension Security Act of 2002 or equivalent legislation: Now, therefore, be it

*Resolved*, That it is the sense of the House of Representatives that the Congress should complete action in the 107th Congress on the Pension Security Act of 2002 and present such legislation to the President for his signature prior to adjournment so that needed pension protections and reforms may be delivered to the American people.

The SPEAKER pro tempore. Pursuant to House Resolution 547, the gentleman from Ohio (Mr. BOEHNER), the gentleman from California (Mr. GEORGE MILLER), the gentleman from Ohio (Mr. PORTMAN), and the gentleman from California (Mr. MATSUI) each will control 15 minutes.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Resolution 540.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, over the last year, thousands of hardworking and loyal Enron and WorldCom employees watched helplessly as their companies and their retirement portfolios collapsed. We have an obligation to provide workers with the tools to help them manage their retirement savings. Let us just put the facts on the table: the House has acted on bipartisan pension protections, but the Senate has not.

Back in February, President Bush called on Congress to act in a bipartisan fashion to restore confidence in our Nation's pension and retirement security system. More than 160 days ago, the House did its part by passing a comprehensive pension protection bill that protects workers from losing their retirement savings in Enron-style corporate meltdowns. Today we wait.

One thing is very clear: worker retirement savings remain vulnerable to corporate meltdowns today, and it should not take another Enron or WorldCom for Congress to act on bipartisan pension protection that would give workers the tools they need to protect and expand their retirement savings.

That is exactly why we passed the Bipartisan Pension Security Act in April, more than 160 days ago. It takes a balanced approach by expanding worker access to investment advice and includes new safeguards to help workers preserve and enhance their retirement security, such as giving employees new freedoms to diversify their portfolios. However, it also insists on greater accountability from senior company insiders.

There are several pension provisions that the Senate has not acted on. Enron barred workers from selling company stock until age 50; the Pension Security Act gives workers new freedom to sell their company stock within 3 years. In addition, it requires companies to give workers quarterly benefit statements that include information about accounts, including the value of their assets, their right to diversify, and the importance of maintaining a diverse portfolio. The benefits of diversification will help workers better plan and save for their future over the long term.

The bill also empowers workers to hold company insiders accountable for abuses by clarifying that companies are responsible for workers' savings during blackout periods when workers cannot make changes to their 401(k)s. Under the Pension Security Act, as under current law, workers can sue company pension officials if they violate their fiduciary duty to act solely in the interests of 401(k) participants.

As we all know, defined contribution 401(k)-type accounts have become a primary vehicle for retirement savings. Yet, today, the vast majority of American workers receive no investment advice on how best to structure their 401(k) retirement plans; and most cannot afford to pay for it on their own like company insiders can. It is time to fix these outdated Federal rules that discourage employers from giving workers access to professional investment advice.

Like most U.S. companies, Enron and WorldCom did not provide their workers with access to this type of investment advice. The investment guidance would have alerted these workers to the need to diversify their accounts, which would have enabled many to preserve their retirement savings. The Pension Security Act changes these outdated rules and encourages employers to provide their workers with access to this high-quality investment advice.

We need to give investors more choices and more information to choose wisely, so they are better able to navigate their way through volatile markets and maximize the potential of their hard-earned and hard-saved retirement savings. Workers must also be fully protected and fully prepared with the tools they need to protect and enhance their retirement savings.

The Committee on Education and the Workforce, along with my colleagues from the Committee on Ways and Means, have been engaged on the issue of pension reform for several years now, looking at ways to expand worker access to high-quality investment advice and encourage employers to sponsor retirement plans for their workers.

As our committees have been doing hearings to specifically address the Enron collapse, we did so with a firm commitment to identify further reforms that promote security, education, and freedom for employees who saved all their lives for a secure retirement. Congress should move decisively to restore worker confidence in the Nation's retirement security and pension system, and the bill before us will accomplish those goals.

Unfortunately, instead of gathering the President's signature, the Pension Security Act has been gathering dust. The Senate has not acted on any pension protection bill. If we are truly concerned about protecting the pensions of American workers, the 107th Congress will complete action on this vital issue and send President Bush a bipartisan pension security bill that he can sign into law.

Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. SANCHEZ), a member of the committee.

Ms. SANCHEZ. Mr. Speaker, I wonder if the gentleman from Ohio (Mr. BOEHNER), who just spoke on the other side of the aisle, realizes that the constituents in his State have lost $8.27 billion of their hard-earned nest egg due to a poor economy, corporate scandal, and weak pension laws. That is why we need to do something about these pension laws.

By now, all Americans have been affected in some way by the fallout from the collapse of large corporations like Enron, WorldCom, and Tyco. Executives have escaped troubled companies with millions of dollars in compensation, while American workers have lost over $175 billion in their 401(k) plans. Workers in my own State of California alone have lost more than $18 billion in their 401(k) savings plans.

As a legislative body, we have begun to examine ways to protect American families from future loss through the Pension Security Act, but among the many issues in this bill that we do not address is the lack of employee representation on pension boards. In its current form, pension boards have the potential to continue the cronyism that got us into the dilemma that we are in now.

In the case of Enron, many of the pension board trustees were high-ranking executives whose corporate marching orders did not represent the best interests of the workers they were appointed to protect. The Rangel-Miller substitute to the Pension Security Act would have given employees a voice at the table, where decisions about their companies' pension plans and offerings are made.

Employee representation on pension boards has already been successful, even in my own State of California, where we have the California Public Employee Retirement System, or PERS. We require six of the 13 members of that board to be elected by active and retired workers of that system.

Giving workers a real voice and real choice means ensuring active participation and overall plan management. Workers bear the financial risk in 401(k)s. They deserve to get pension people on the board representing them.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Mississippi (Mr. PICKERING), the author of the resolution before us.

Mr. PICKERING. Mr. Speaker, I thank the gentleman from Ohio (Mr. BOEHNER) for his leadership on pension reform and thank both him and the gentleman from Ohio (Mr. PORTMAN) for all they have done. I am pleased to sponsor the resolution before us today expressing the sense of the House of Representatives that Congress should complete action on H.R. 3762, the Pension Security Act of 2002.

Mr. Speaker, due to gross irresponsibility, corruption, and financial mismanagement, several of our country's most noted corporations have collapsed. Accordingly, tens of thousands of employees who held their retirement accounts in these companies have lost everything. Plans made for retirement vanished, hopes and dreams for the future disappeared, and savings to send children to college are gone, all because of improper and fraudulent actions of a handful of corporate executives who took advantage of this system.

We know all too well in my home State of Mississippi the cost and the consequence and the hurt and the pain and the loss when this happens. The leadership of this House, Republicans and Democrats on a bipartisan basis, took action to prevent further such abuses. We passed the Pension Security Act in April to protect the pensions of American workers from corporate wrongdoing while restoring worker confidence in our country's pension system.

□ 1745

However, the Senate has not passed pension security reform. Will we allow yet another corporate scandal to hurt even more families before we get a bill to the President's desk?

National security is critical today. Economic security is vital today. Retirement security should be a top priority and must be passed before we leave this session. It is crucial legislation that will reform our country's outdated pension laws. It prevents corporate insiders from selling their own stock during blackouts, and it gives workers freedom to diversify their portfolios.

Mr. Speaker, the House has done its duty. We passed this much-needed reform 5 months ago. While the President waits, the opportunity to sign this bill sits motionless, collecting dust. The time to act is now.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Speaker, I wonder if the gentleman who just spoke realizes that his own constituents in his State lost $1.48 billion of his constituents' hard-earned dollars there. So I just want to remind him also of the scandal that has taken place here today.

Mr. Speaker, I rise here today because the rank and file workers, many of whom that I represent and many that Members here represent know and expect Congress to do something about this corruption that has been going on now for some time and not continue with this whole issue of safeguarding the lives of individuals that make seven-figure pensions, get special perks, and will get more protections under this Republican-sponsored piece of legislation.

As my colleagues know, this country lost over $175 billion in retirement savings, and in California alone we lost 18 billion. I would like to remind people that in our own districts right now we are faced with some very hard issues. Our economy is hurting. Nationally Hispanics right now have one of the highest rates of unemployment, 7.5 nationally, and in my own district in California in cities that I represent it is way above 11 percent and it has been there for 6 months or more.

How do I explain when I go home to my constituents that we are ignoring the jobs about putting bad CEOs behind bars and letting them go scot free? We cannot allow this version, the Republican-sponsored legislation, to get out because people are watching. Americans want to know that there is justice for all.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. ISAKSON), a member of the committee.

Mr. ISAKSON. Mr. Speaker, I thank the chairman for yielding me this time, and I thank the chairman for the hearing he called immediately following the revelations about Enron, a meeting that so far everybody that has spoken was in attendance, a meeting that a gentleman spoke at who was an employee of Enron. The real scandal is not a bunch of statistics where somebody tries to divert attention. The scandal is that on that day that committee where everybody that has spoken so far attended heard a man, an employee at Enron, who had $751,000 in his 401(k) in January and had nothing by the time we had that hearing. And at the same hearing the administrator and a trustee of that plan who testified admitted that her plan had gone down by only 10 percent and the difference was she had information and she could diversify. And when that gentleman, an employee of Enron, was asked about the information he received from his executives, he said the only thing they were sent was the value of the increase of Enron stock.

We can talk about all the scandals we want to, but the biggest scandal of all would be a failure of this Congress, in a year of trepidation and economic tragedy, to not see to it that the rank and file Americans we represent have a right to good information, the right to hold the administrators accountable, and the right to diversify their accounts. So rather than point to obscure statistics about what may have happened in a State and trying to attribute it to an individual who speaks, let us speak unitedly as we did in bipartisan effort just months ago and let us pass a bill that brings about the kind of reform to put to an end the kind of tragedies that took place at Enron just a short time ago. Do not divert the debate. Help the American worker and the citizens we represent.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY), a member of the committee.

Mr. TIERNEY. Mr. Speaker, I suppose that the gentleman who just spoke up understands that the constituents in his State have lost about $5.25 billion of their hard-earned nest egg due to a poor economy, corporate scandal, and weak pension laws, and in fact, what is amazing is all of the things that he talked about at that hearing were true. That was what the hearing told us. Nothing in the bill that passed this House would address any of those issues. That poor employee still would never have gotten information from the employer, from the CEOs and the other high corporate officers saying that they had bailed out on their stock and left the employees holding the bag. The bill that passed the House does not resolve that. Nothing puts those people on the board of directors so that they can be aware of situations like that and help them.

The fact of the matter is once again we are here in this House talking about a sense of the House, which makes no sense because it does not do anything. We are instructing the other body on how to do its business instead of doing our business. Do we want to help people in this country? What they need is an extension of their unemployment benefits. They are out. But we are not talking that action. We are talking about a sense of the House resolution.

Let us talk about people who do not have health insurance. There are almost 40 million of them now. We are not doing anything on that. Let us talk about education. We have a ''no child left behind'' bill that the President ran around the country touting, but he is afraid to have the majority bring it up in the House because we are $7 billion short on it. And that is money to help people get their children an opportunity in the future.

We could be talking about job training for people that need to get back into work, except the budget put forward by the majority and the administration, cuts those funds way back so that people that are displaced cannot have the resources they need to move forward.

The fact of the matter is this economy continues to struggle. Families across America watch helplessly while their retirement savings dwindle because of corporate greed. We watch their health care costs rise. Small businesses cannot meet those, and yet there is no help going out in that direction because we are not dealing with any business of import to American families in the House. We are dealing with senses of the House, senses of Congress, telling the other body of the Congress what it should be doing.

The fact of the matter is, Mr. Speaker, there is much we could be doing, much that we should be doing. I say let us get down to business and let us do it.

Mr. BOEHNER. Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois (Mrs. BIGGERT), a member of committee.

Mrs. BIGGERT. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I rise in strong support of House Resolution 540. Throughout the Nation employers pay good money to provide an excellent benefit to their employees' 401(k) plans run by professionals, and yet our 27-year-old law effectively silences those professionals, denying employees a major part of the benefit their employers want them to have. Now more than ever the 42 million Americans investing their retirement income in 401(k) plans need access to critical investment advice that will help them achieve their financial goals.

Retirement security and investment advice legislation has passed by a bipartisan vote in the House, not once but twice during this Congress. What I like best about this bill that we have passed is it gives workers more freedom to diversify their retirement savings. American workers need relief and they deserve it now. Let us get our pension reform legislation to the President's desk before Congress adjourns this year.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY), a member of the subcommittee.

Ms. WOOLSEY. Mr. Speaker, I wonder if the gentlewoman who just spoke realizes that constituents in her State have lost $8.66 billion, the fourth highest amount in the Nation, of their hard earned nest egg due to a poor economy, corporate scandal and weak pension laws.

Here we are after that, it is the last full week in September and the House has passed only five of 13 appropriations bills, and yet we are taking precious time to debate a meaningless resolution urging the Senate to pass a pension reform bill.

Do I want the Senate to pass pension reform? I sure do. But rather than wasting our time worrying about the Senate, I call on the majority party to pass a real pension reform bill here in our House because we have not done that yet.

Unlike the House passed pension bill, a real pension reform bill will make pension fairness its number one highest priority. The House passed pension bill not only fails to correct the pension inequities in current law which favors corporate executives over employees, it actually makes them worse. The House passed bill continues to allow executives to sell the stock that they receive in stock options at any time they choose, while it blocks their employees from selling company provided stock for 5 years.

The House passed pension bill will continue to allow executives to dump their own company stock without notifying their employees. In fact, under the House passed bill executives can actually encourage employees to continue to buy company stock just as they did at Enron, where thousands of employees lost significant amounts of their pensions. And an even bigger step backwards is that the House passed bill gives an unfair share of benefits to top executives, resulting in fewer pensions for lower wage workers.

Mr. BOEHNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. DELAY), the majority whip.

Mr. DELAY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I could say that all the issues that the gentlewoman was talking about could be taken care of in conference committee if we could get a bill from the Senate and go to conference and work some of these out. The reason that we are here today is very important. We do not have a conference committee, and we do not have a bill that we can work on and work these problems out.

Members will vote today to reaffirm the House's commitment to protect workers' pensions and their 401(k) plans. Employees who watch renegade corporate officers raid their pensions want President Bush to be able to sign a piece of legislation to protect their retirement funds from future attacks.

Now, back in March the President told Congress to send him some common sense reforms and on April 11 this House answered his call. This House passed the bipartisan Pension Security Act. These powerful protections attracted support from 46 Democrats. They joined the Republican House majority because our pension protections were needed and they are necessary. Members of both parties came together because workers 401(k)s and pensions were in jeopardy and that had to change. Specifically, the House pension protection package gives clear new diversification rights to employees.

Now they are vested in only 3 years. Now they can diversify out of company stock. Now they have multiple investment options that are provided to the employees, and now they have more than their employer stock. We strengthened notice rights so that employees will not get caught off guard. We have placed strong restrictions on CEOs. We blocked other executives from trading company stock when the employees cannot trade their stock.

Mr. Speaker, the House passed a strong balanced pension security plan months ago, but those potent new protections are not helping the American people yet. The President is still waiting for the Pension Securities Act to reach his desk. He says he will sign it as soon as it comes. He has been waiting since April. Millions of worried Americans are waiting for action on their retirement security. They should not wait another week. There is no reason in the world to postpone action on pension reform. Workers have watched for half the year as their 401(k)s and their pensions have been battered about by politics, and despite the clear need for pension reform, the President continues to wait, unable to sign the bill that the House passed in a big bipartisan way.

So I just encourage our Members to support this resolution. Send a very strong message to the American people. Let us demands action on pension security. The Federal Government should put politics aside and vote to protect workers 401(k)s and protect workers' pensions.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS), a member of the committee.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I am sure the distinguished majority whip knows that the people of Texas have lost $11.47 billion in their pension assets since these scandals began, and I am pleased to hear him say that a conference would be necessary to fix the problems in the bill that passed the House in April.

He is right. There are a lot of problems, and one of those problems is best understood if we thought about what would happen if the majority's bill that had passed through this House were the law at the time the Enron scandal came along.

□ 1800

If Enron was working with a financial firm that was doing its investment banking on the one hand and giving investment advice to its pensioners in their 401(k) plan on the other hand, the majority's bill would make it legal for that financial firm to give advice to employees that would encourage them to buy Enron stock. We would have to wonder whether that advice was based upon the wisdom of buying Enron stock and filling up a pension 401(k) with it or whether it was based upon the reward that that financial firm is earning as an investment banker in the form of millions of dollars or tens of millions of dollars of fees by representing Enron.

The scandal that has roiled the market, the scandal that has caused the evaporation of $4.5 trillion of pension assets is all about conflict of interest. The flaw in the bill that the majority passed out of here 160 days ago is that it institutionalizes into the law conflict of interest.

The chairman is right when he says that American workers need sound investment advice, but he is incorrect when he says that this is the kind of advice that they need. American workers need independent, unbiased investment advice about where to put their money. The majority assures them just the opposite, which is why this motion should be defeated.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. OWENS).

(Mr. OWENS asked and was given permission to revise and extend his remarks.)

Mr. OWENS. Mr. Speaker, the Republican majority has managed to move the discussion off the table and stifle any discussions of the swindles that have taken place. However, the hurt, the pain goes on with respect to what has been endured by working families and hardworking employees of corporations that swindle them out of their pension funds. To go forward with the kind of ceremonial bill that was passed in this House perpetuates that swindle.

We did not do anything significant. We did not deal with the situation that exists in terms of they have lost their money and no one has offered them ways to get it back, except I must pay tribute to the gentleman from New York (Mr. SWEENEY) and the AFL–CIO. Despite the fact that Enron's employees were not unionized, several other corporations were not unionized, they have gone to bat with them, and they have got a settlement with them in the bankruptcy courts for some Enron employees to get some of their money back.

We had an opportunity to be able to deal with correcting what the Republican majority started when they took control. They wanted to maximize deregulation from working conditions in the shops to the way corporations handle pension funds and anything else. They wanted to give the corporate bosses all the power they could give them and they did that, but in hindsight, after seeing the debacle that had taken place, we had hoped that there would be bipartisan cooperation, and small steps like guaranteeing that there be a representative of the employees on the pension committee were voted down by the committee, and the bill that left this House did not have that, very tiny steps like requiring that any executive who sold his stock would have to notify the public right away. Use electronic notifications, that is available now, that was voted down.

So we are in a ceremonial situation that should not go forward. We would like real pension reform, and I hope that we have bipartisan cooperation to get real pension reform.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself the remaining time.

I would urge the Members to vote no on this legislation because to vote yes on this is to reaffirm the House to do nothing. The fact of the matter is most of this legislation was written before the Enron debacle. Most of this legislation was written because it was designed for the purposes of increasing the contributions that people could make to the 401(k) plans, allowing small businesses to make contributions; to the owners, they would not have to offer pension plans at that point because there is no need for them to take care of their employees, treating executives differently than we treat employees. All of that was already in this legislation.

Yes, we had a hearing on Enron and we listened to these employees who were locked into their pension plans, could not sell their stock. This legislation would have those same people, the people who were locked into WorldCom, for whatever it is worth today, requires a 5-year phase-out period and then it is 3 years. We would like to talk about how the markets work and how fast they are and how they balance out. Those same people are stuck there today, riding this out as the market dropped to its lowest point in 6 years or in 4 years on the various indexes. They cannot sell that corporate stock because they are locked in.

If this Congress really wanted to do something, just free those millions of American workers so they could diversify today. They could get out with what little they have left in their corporate stock.

The gentleman from Ohio, in his State they have lost $8 billion in their 401(k)s. In California they lost $18 billion. He is right, those are not abstract figures. That means someone is not going to retire this year who planned on retiring. Somebody is not going to retire next year. I assume my colleague had constituents come to him, like they come up to me and told me how their retirement plans are shambles, how one of the spouses is going to have to continue to work. They thought he or she would be able to retire, how they now do not have the money to put their kids through school.

Yet the Republican plan does not do anything for these people. It does not let them out of these plans. It does not let them put workers on the board. 100 percent of this money belongs to the workers. It is their money. It is in their 401(k) plan, and they will not let them sit on the pension board to discuss information about investments.

Finally, they say, well, we give them more investment advice. After all we have learned out of Merrill Lynch, after we have learned out of Citicorp, after all we learned about the huge conflicts of interest about the investment banks and investment advice and touting these stocks, all we have learned, this bill does not respond to it because it allows those very same conflicts to continue. Wells Fargo now runs an investment fund. Other companies are scouring the landscape to try to buy these mutual funds because annuities are not doing so well. Insurance businesses do not want to be in the business. I know in the financial reform bill we had Chinese firewalls. They all broke down during the nineties. Everybody was doing everybody else's business.

We owe it to the public to turn down this bill, and we have to understand the reason the bill has not moved in the Senate is because the Republicans will not accept any worker protections. Yes, they want a bill just like this bill that takes care of corporate greed, takes care of corporate criminality, does nothing for the worker. That is unacceptable to the people in this country, and it should be unacceptable

to their elected representatives in the House of Representatives.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would remind all Members again, it is not appropriate to characterize the positions of the Senate.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of our time.

Mr. Speaker, at the end of the day we need to send President Bush a pension protection bill he can sign into law because this is about real people and their own financial security, and the gentleman and my colleagues on the other side of the aisle who talked all during this debate about the amount of losses in pension accounts by State is exactly the reason we have this resolution on the floor today.

The House passed pension protection legislation on April 11. We are still waiting to send a bill to the President, and I would remind my colleagues that this was a bipartisan bill, and I appreciate that my colleagues may not agree with all the aspects of the bill, but 46 Democrats voted with all Republicans to move this bill to the other body. Forty-six Democrats, almost one-fourth of the Democrat party in the House, voted with all the Republicans to move this bill to the other body to try to get it to the President's desk.

At the end of the day, this is about real people. It is about their retirement security, and it is time that this Congress act and get this bill to the President's desk before we leave here before the election.

Mr. Speaker, I yield back the balance of our time.

The SPEAKER pro tempore. It is now in order to consider the debate controlled by members of the Committee on Ways and Means. The gentleman from Ohio (Mr. PORTMAN) and the gentleman from California (Mr. MATSUI) each will control 15 minutes.

The Chair recognizes the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of the resolution before us. This is a resolution to send a strong message that it is time to help all American workers to save more for retirement and to be able to have more security in their retirement. I commend the gentleman from Mississippi (Mr. PICKERING) for offering the resolution, and I am happy to support him.

Mr. Speaker, today we are talking about doing the right thing. We are talking about just following up on what this House did back in April to be able to give people a little more security in their retirement. The underlying legislation that we are encouraging the other body to act on allows people who have retirement plans to have a lot more security in a number of different ways.

First, very importantly, if they are in a 401(k) plan now and they get a corporate match, as was the case with Enron, that company can tie a person into that stock for a long period of time. At Enron it was age 50 plus having 10 years of service. Under the 401(k) rules as they currently exist, a person could be tied down until they were age 65 or indefinitely.

We say instead people, after they have vested and they vest after only 3 years thanks to this House taking action last year to decrease vesting from 5-years to 3 years, after only 3 years they can divest of that stock. That is a big difference and it does make a difference. It makes a difference to millions of workers around this country who have 401(k) plans, for 42 million people in that situation. Those who have the good fortune of getting a match from their employer, and most of them do, and those who get that in corporate stock now will have the ability, the choice to be able to get out of that stock that the workers at Enron did not have.

Second and very importantly, it provides a lot better information to those same workers so that they are going to have the kind of data they need to make a good decision, better information, including the fact that when they get into a pension plan and get given a statement saying this is what this plan is all about and they ought to diversify, because commonly accepted investment principles for retirement says people do not want all their eggs in one basket, they want to have diversification. Companies now would have to say that in plain English to employees as they get into these plans. That is good. That is an improvement.

More important to me is that on a quarterly basis now a statement is going to be given to all workers. It includes the value of their assets, again their rights to diversify so they know they have those rights, an explanation of generally accepted investment principles in plain English. This is extremely important. It is not required now.

Finally, with regard to blackout periods, there was discussion earlier about the fact that during a blackout period that executives would be able to trade where employees would not who were in a 401(k) plan, that is not true. That is changed in this legislation.

This legislation also says that with regard to a blackout period a person has got to get 30 days notice. That was picked up in the Corporate Accountability Act that actually already passed, but it came out of this legislation out of the House.

There is additional fiduciary responsibilities that is in this legislation that during a so-called blackout period; that is, when the company changes advisers or something and has a blackout period on its 401(k) plan or other retirement plan, that people cannot trade in the stock during that time period. There are additional fiduciary responsibilities that go to the employer, to the executives. That is in the legislation. These are all positive changes.

Finally, with regard to education, everybody who looks at our retirement system today agrees that we not only need to allow people to put more aside for retirement, we need to encourage people to be able to do more for themselves and their families, but we also need to give people more information and better education. This legislation says that on a pretax basis a person gets a tax break basically for going down and getting investment advice, up to $500. It is not inexpensive to get investment advice. This is very important to people. They can choose whoever they want. There is no potential conflict of interest here because they can choose an adviser who is a third party who has nothing to do with the company or its 401(k) plan.

Also, significantly, as the gentleman from Ohio (Mr. BOEHNER) just discussed, it also provides companies the option to be able to have advisers come into the company and offer good, sound advice under a fiduciary duty, that they have to not only provide good advice and sound advice and objective advice but they have to be certified, they have to be qualified to do so, and they have to disclose any kind of potential conflict they might have with the company or its 401(k) plan.

This is, when we talk to people in the trenches, again, one of the most important, single aspects of this legislation, which is to provide workers with better education so they can make better decisions so there is a nest egg there when they retire that will take care of themselves and their families in retirement.

This is great legislation, and there is no better way to show that than the fact that it has passed the House on a strong bipartisan basis. Forty-six Democrats voted for it. It is now stuck in the other body, and the President waits for it to come to his desk which he says he will sign it. He will sign it immediately.

Today's exercise may be viewed by some as meaningless, but to us it is simply a way of sending a strong message. Workers are waiting for this relief. The Enron debacle happened about a year ago. In April the House acted, and still we see no action on the other side of the Capitol, in the other body, and therefore, we cannot help people to be able to get all those rights we talked about earlier, these important changes in retirement security.

There were a number of statements made earlier by some of my colleagues on the other side of the aisle that I just do not get. They talked about how this bill gives executives more perks. Name one. I challenge my colleagues. Name one. I do not know what they are referring to. They say it makes it worse because executives can divest or sell when there is an employee blackout. Not so, and actually, again, that is in current law now because it was part of this bill, but then it got passed as part of the Corporate Accountability Act.

□ 1815

I do not know what talking points the other side of the aisle is referring to. But the bottom line is that this legislation was bipartisan. It passed this House with a strong vote. It is entirely focused on retirement security, helping people to be able to have more security in their retirement accounts.

We are saying today that it is time to move this legislation from the halls of Congress and from a lot of talk to action, and to be able to actually help people in need, people who are looking at their retirement accounts decrease 20 to 30 percent, and telling those people help is on the way. This is one way to give Americans a more secure retirement. It is good legislation, and I strongly urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. MATSUI. Mr. Speaker, I yield 6 minutes to myself.

Mr. Speaker, I am astonished. It is 6:15 in the evening; West Coast time it is 3:15. We have been debating essentially this issue with the rule and now in debate; and we will go on for another couple hours on this, so we will have all of this staff time in the House of Representatives and all of us sitting in the House of Representatives.

What this resolution does is just say that the Senate should pass the Boehner-Thomas bill that was passed earlier this year. That is all it does. It is a meaningless piece of legislation. It has no effect of law. It is just gamesmanship.

I suppose the gentleman from Ohio (Mr. PORTMAN) actually might feel a little more secure at night because this resolution will probably pass, and it will make us feel better. Like, my gosh, we earned our pay because we were on the floor debating an important issue.

Maybe the gentleman from Ohio feels a little better also because people from the State of Ohio in their 401(k)s only lost $8 billion over the last 18 months. My problem is California, these same people that have 401(k)s, have lost $18 trillion. Maybe the intensity of the gentleman from California (Mr. GEORGE MILLER) and my intensity is a little greater than the intensity of the gentleman from Ohio because $8 billion is small time compared to what we lost in California.

But what is interesting is the way Members handle legislation is not by passing resolutions and beating our chest and making a spectacle of ourselves. We walk to the other body, 5 minutes away, and say to the Senators, this bill has not passed. How can we get this piece of legislation passed? They may raise some problems. They may say we should beef the bill up a little bit. Then we could come back and start talking. The reason nothing happens is because we keep beating our chests and pretending like we are legislating when we really are not.

Many of us who are concerned about this, in the last 18 months since President Bush took the oath of office, the stock market lost 40 percent. It went from 11,700 points down to 7,700 points. That is a lot of money. That is trillions of dollars worth of losses.

My colleagues said when the President took office, we have to reform Social Security; we are going to privatize Social Security. All of a sudden privatization has become a bad word because people have lost money in the stock market, so they abandon the discussion about Social Security; but it will probably come up next year because the President plans to privatize Social Security. That is why this election is important.

We will not debate Social Security. We have four Republican bills out there. The gentleman from Texas (Mr. ARMEY) has one, the gentleman from Florida (Mr. SHAW) has one. Why not bring those bills up on the privatization of Social Security. Let us debate those so at least the American public in an election year will know where we stand.

On prescription drugs, Republicans want to privatize Medicare and the prescription drug program. That is why the other body has a very difficult time with it because we want to put prescription drugs under the Medicare program to make sure all seniors are protected.

So we have fundamental differences, but what is really sad is that the Boehner-Thomas bill is irrelevant. We have some major problems in America. People have lost their 401(k) plans. People are stuck with their own company's plans, their stock in their 401(k)s. This bill will do very little. I think the gentleman from California (Mr. GEORGE MILLER) said it is a 5-year transition before it really comes effective. Then the so-called financial advice will come from the same people that are managing the Enron-type pension plans. They are going to say buy Enron stock or WorldCom stock because it is in their company's best interests. They are getting their wages from the company. That is why it is very difficult for the other body to get excited about this.

Mr. Speaker, what we should be dealing with right now is transparency. One of the real problems in the stock market and why there is a great loss of confidence is because people know that the books are not necessarily accurate. We saw that with the former CEO of General Electric, Jack Welch. This guy has a corporate jet on call, he had a penthouse in New York, tickets to sporting events. Millions and millions of dollars' worth of money that was part of his going-away present in perpetuity for the rest of his life. He was smart enough to give it up because he knew the political ramifications.

I wish my colleagues would have the judgment of Jack Welch, and I will tell Members why, not to punish corporate CEOs, but to provide transparency. The American public when they invest in the market should know exactly where that money is going. That means less stock dividends that are being paid out. That is why this is important.

We would like to just offer a bill, or even an amendment; but under the rules, the Republicans will not allow us to do it. But if in fact there is a situation where we are going to give big fringe benefits to many of these CEOs who are retiring, all it requires is letting the shareholders of the company know what these benefits are, what the value is; and secondly, letting the stockholders vote. What is wrong with that? Why can we not debate that issue today and send it over to the other body. I bet they would pass it quickly.

But the other side of the aisle does not want to do it quickly because they have a lot of friends that they are helping. That is what the problem is right now, and that is why this resolution is a waste of time, and that is why we have already wasted 3½ hours, and we will probably waste more time on nothing today. But we will go home, and we will feel a little better and have a glass of wine and kind of enjoy life.

But I will say that my constituents, maybe not the constituents of the gentleman from Ohio, but my constituents, because they have lost $18 trillion in their 401(k) plans, are really sad.

Mr. Speaker, I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would remind Members that characterizing why the Senate might be having difficulty is also not in order under the rules.

Mr. PORTMAN. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, pension security is close to the heart of every working American. Workers save for years with the hopes that after they retire they will be able to live without financial worries, spending more time with their family and friends.

Five months ago the House passed a pension reform bill with significant bipartisan support. This legislation gives workers the freedom to diversify their retirement savings, it expands worker access to investment advice, empowers workers to hold company insiders accountable for abuses, and gives workers added protections. The House has acted on pension reform; the Senate has not. Yet Americans continue to worry about their retirement security.

Mr. Speaker, Americans deserve a secure retirement. They expect it, and they have earned it. I also want to add that I think the majority whip a few minutes ago on the House floor, the gentleman from Texas (Mr. DELAY), made an excellent point. He reminded us that while the House has acted, the Senate has not. Under our system, unless we have a work product from the House and a work product from the Senate that can go to a conference

committee, we are not going to have pension reform. As much as we might criticize what the House has done, it is too late to do anything about it. Pension reform passed with bipartisan support in the House. The only action left now is once the House has acted, under our system, the Senate now needs to act, and we need to get that work product. The House has acted; the Senate has not.

The other point, Mr. Speaker, there has been a lot of sentiment expressed tonight about the great need for pension reform and pension security. I think we all agree with that, but we need to focus not on what is wrong with the work product of one body, but we need to focus on the solution. And once again, the only way we are going to get to that solution is if we have a work product from the House and we have a work product from the Senate. Unfortunately, the House has acted; but the Senate has not. Until we get to the point where we can get to the conference committee and resolve our differences and do what is right for American workers and the American people, and for those who deserve to have a secure retirement, we are not going to get to that solution. Once again, the House has acted and the Senate has not. Until we come up with a solution to that dilemma, which is going to be a conference report after the House and the Senate have acted, we are not going to do what is right for the American people.

Mr. Speaker, once again, the House has acted; the Senate has not. We have to resolve that before we can do what is right.

Mr. MATSUI. Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding me this time and for his leadership. I wonder if the gentleman from Texas (Mr. SMITH) realizes that his constituents in the State of Texas have lost $11.5 billion of their hard-earned nest eggs due to corporate scandal and weak pension laws.

It is very interesting to see us gathered on this floor telling the other body that it should pass legislation when we have been so delinquent in this body in doing our own business. The other body has passed a prescription drug benefit which we are trying to discharge with a discharge petition. We should be taking up that prescription drug benefit. The American people want and need it.

Not one single appropriations bill has become law even though the fiscal year is less than 1 week away, October 1. The Republican leadership has refused to schedule desperately needed bipartisan school construction legislation.

That leadership has also failed to schedule legislation to help all Americans with escalating prescription drug benefits, as I mentioned.

Now the Republican leadership has a new strategy, pass resolutions praising old, irresponsible tax bills and blame the other body. The resolution before us today is not only a press release, it is a very misleading one.

Members can see what we need to do for education in our country and how far short the Republican initiative on this comes, and that we are taking no action to meet the needs of America's children. The administration and the Republicans say Leave No Child Behind in their rhetoric, but in reality their budget request leaves millions of children behind by having a $7 billion deficit in what they are sending to this floor.

Hopefully, some of the Republicans on the other side of the aisle will prevail so we can do justice for our children. This is surreal. This is not sense of the Congress; this is nonsense of the Congress.

Mr. Speaker, our Founding Fathers placed a value on life, liberty and the pursuit of happiness. That pursuit of happiness included working hard, playing by the rules, and being able to reach their self-fulfillment and retirement with dignity, not to have to be dependent on their children to support them; indeed, helping their children reach their fulfillment.

What has happened to the pensions of America's workers is absolutely a travesty of justice and goes against the principles of our Founding Fathers who valued the pursuit of happiness.

□ 1830

Separate and apart from the ridiculousness of us telling the other body what to do when we have not done our own business, this bill is a bad bill and should not become law. Shareholders should be made aware of and allowed to vote on perks provided to retired executives, but not under this bill. Retired corporate executives often get large retirement benefits above and beyond their pensions and other conventional benefits. These include housing, corporate jets, living expenses, tickets to sporting events and the rest. Congress should impose penalties on corporations providing such benefits unless shareholders know and approve of such things. We should ensure that corporate executives that crash their companies cannot escape with golden or platinum parachutes. But corporate executives also get retirement benefits that they can collect even after the corporation fails. Congress should tax executives on their deferred compensation benefits like all other income if the benefits are paid to executives in the case of bankruptcy or corporate corruption.

This bill should be opposed because it endorses the Republicans' inadequate pension legislation. The GOP bill does not show what we have learned from the collapse of Enron, WorldCom and other corporate scandals. The underlying bill does little to protect employees' retirement savings. The underlying bill does not hold executives accountable. The underlying bill is not worthy of passage. Let us mind our own business, heed the needs of the American people, and pass our education bill, our prescription drug bill, and our own good pension bill.

I urge my colleagues to vote against this nonsensical sense of the Congress.

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume to talk a little about what is actually before us today. The gentlewoman from California talked about a lot of different issues and ended by saying that she is not supportive of the legislation because it does not include certain things. Everything she talked about including has to do with executive compensation. Taxing executives and talking about ways in which we can further keep executives from getting the kind of compensation that they are currently getting is a legitimate subject and it ought to be one that we have formal debate on, have hearings on it and bring it to the floor. But I would ask the gentlewoman how it is going to help one person have a more secure pension. It has nothing to do with what is before us. It is a great message.

I would ask the gentlewoman, I know that she is not on our committee that dealt with the prescription drug issue for months and I see the gentleman from California (Mr. MATSUI) is here, the gentleman from Maryland (Mr. CARDIN) and others from the committee, but to say that we have not passed a prescription drug benefit I think is a little surreal. I remember being on this floor and spending a lot of time on that issue. I remember passing a $350 billion piece of legislation that provides real coverage for prescription drugs. We can differ on how that prescription drug coverage is offered to our seniors, but the House took it upon itself to pass legislation that provides a real prescription drug benefit.

It, too, now that the gentlewoman has raised it, if she wants to get into the other issues, we can talk about all the ways the House has acted and the Senate has not acted and the President awaits. Prescription drugs is a perfect example. The Senate has not acted on providing a prescription drug benefit. If you would consider the generic drug legislation in the Senate a prescription drug benefit, I hope you are not going home and telling your constituents that because it is not going to offer them the kind of benefit that they are looking for which is to be able to pay for prescription drugs. The average senior pays over $2,100 a year. None of that will be helped by the generic bill that passed in the Senate. The Senate was not able to pass a prescription drug benefit. They had it on the floor for a week.

Homeland security is another issue that we worked on together. We passed that issue 9 weeks ago now or something like that. The President asked us to pass it, the House got busy, we had a good select committee process, and we passed it. The Senate still can't

seem to get its act together to pass legislation in that regard to be able to keep our country safer.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman will suspend. The phrase ''the Senate can't get its act together'' is not appropriate under the rules.

The gentleman may continue.

Mr. PORTMAN. I apologize to the Chair. I will refrain from saying that again.

My point is if you go down the list, whether it is prescription drug coverage, whether it is the pension security bill before us today, whether it is the faith-based initiative which passed this House on a bipartisan basis, whether it is having a budget, the Senate does not even have a budget, the Senate has not been able to, I am not sure how I can characterize this, but the Senate has not been able to act and the House has. I just think it is a little surreal to stand here and say that somehow in this prescription drug issue, the House has not acted and the Senate has is not accurate and to say that somehow this pension bill is not good because it does not deal with executive compensation issues which have nothing to do with what we were trying to do at the time, which was to give people a little more security and more rights with regard to their pensions.

Ms. PELOSI. Mr. Speaker, will the gentleman yield?

Mr. PORTMAN. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Speaker, I appreciate the gentleman yielding. I will do my best not to name the other body by its name.

First of all, let me say that perhaps it is news to the gentleman that many people in our country have very serious concerns about the cost of drugs. The Senate, the other body, passed in a very strong way, 78–21, a generic drug bill that is on that table. We want it to come to the floor so this House can act upon it to lower the cost of prescription drug to the American people.

As far as the bill that passed this House, that is a sham in my view. The Democrats were proposing a prescription drug benefit with guaranteed benefits under Medicare for America's seniors. The Republican bill is a bill that tells seniors to go into the private market and we will help you buy insurance for prescription drugs there. But that is not a real guaranteed benefit.

Mr. PORTMAN. Reclaiming my time, I think I allowed the gentlewoman to make her point, which was my point, which is that the House did act to pass on a bipartisan basis, admittedly we did not agree on all the details, but we passed a real prescription drug benefit under Medicare. The Senate has not. I do not think there is any issue more important to my constituents. I agree with the gentlewoman. I think it is very important to move forward on that. But the Senate has not acted.

That is what we are trying to do today. We are just trying to shine light on the fact that on a number of different issues, the United States Senate has not followed suit, has not passed in a constructive way legislation that we could then take into conference and then send to the President for signature which then could have a real effect on the lives of real people. There is no issue more important than prescription drug coverage, but there is also a very important issue out there which is how to keep people who want to be able to save for their retirement, to give them a little more security so that they are going to know, in the example of Enron for instance, where they could not get rid of their corporate stock, they had to hold onto it because they were restricted, that that could no longer happen. That cannot happen if this legislation passes. People can no longer be told, You have to keep that stock until you're age 50 plus 10 years of service. They can no longer be told that during a blackout period executives are able to trade shares and they cannot. They can no longer be told they are not going to give notice of blackout periods when they cannot trade stocks. They can no longer be in a situation where they are not getting the kind of information that they need through quarterly statements, which we are going to require under this legislation, what their account is, what is going on with their plan. The kind of transparency that the gentleman from California (Mr. MATSUI) talked about is absolutely essential. That is the stuff of this legislation.

It also does provide education. I talked earlier about the gentleman from Maryland's bill and mine which lets people on a pretax basis get a tax break for going out and getting education advice wherever they want it. That is something I think this House on a bipartisan basis agrees is necessary to move to the next step in retirement security. Those are the kinds of things that are in this legislation. Those are the kinds of things that we need to have done. The Senate needs to act. The House has acted. It is time to actually help the American people and not just talk about it.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. All time controlled by the gentleman from Ohio has expired.

The Chair, since the next resolution will also deal with similar matters, would again remind Members that phrases like ''the Senate has not passed legislation in a constructive way'' is an inappropriate characterization of Senate action.

The gentleman from California has 5 minutes left.

Mr. MATSUI. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. I thank the gentleman for yielding time.

Mr. Speaker, it seems strange that we are here debating a sense of the Congress to instruct the other body how to do its business when we are not even allowed to use the name of the other body here. It seems strange that we are here talking about what they should do with their schedule when we have a schedule that begins on Tuesday night and ends on Thursday afternoon. We give new meaning to reducing the week. It used to be ''Thank God it's Friday.'' Now it is ''Thank God it's Thursday afternoon,'' so Congress can go home, without passing any appropriations bills, turning them into law before the end of the fiscal year, which is October 1. Not one appropriation bill is law.

Yes, I say to the gentleman, the Republicans did not pass a prescription drug bill under Medicare. The Democratic proposal was a prescription drug benefit under Medicare, guaranteed benefits for our seniors. The Republican bill is a hoax. Let us not try to fool the American people. They know what is real. Let us do an education bill so that we can fund education and afterschool programs and helping children. Let us pass our appropriations bills, let us have HMO reform, let us pass a prescription drug bill. Let us past electoral reform so we can have honest counts in our country about who should serve in office.

Mr. MATSUI. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. I thank the gentleman from California for yielding me this time.

Mr. Speaker, I regret that this resolution is before us. It is not in the spirit of how we have worked on pension legislation in this Congress earlier. I am proud of the work that the gentleman from Ohio and I have done in a bipartisan way to bring forward pension legislation. But let me remind my friend the gentleman from Ohio that the legislation that we are considering today came to this body through the Committee on Ways and Means in a bipartisan way, but the Committee on Rules adopted an Education and Workforce version which was not in keeping with the way that we proceeded in a bipartisan manner and in fact contained provisions concerning investment advice which I think is very damaging and needs to be corrected, and I think many people believe that.

Let me also mention the other point that the gentleman from Ohio raised, and that is about corporate responsibility and having equal protection for the rank and file members versus the corporate executives. The gentleman from Ohio asked a very important question. How does that help people with their retirement benefits? Responsible corporate management is very important for the workers of a company. How much you compensate or how you try to get around the accounting rules or what you do about executive compensation speaks to the manner in which you run a company and manage a company. The employees

have a vested interest in making sure that company succeeds. When it fails and we have this excessive compensation to the corporate executives, it is different than how the rank and file are treated. We should correct that. That is why I said I think we are wasting our time on this resolution and we missed an opportunity because we should have been talking about the issues that would have brought us closer together on the underlying bill and given us a better chance to get a bill to the President's desk.

I do not believe this resolution helps us achieve those objectives. I regret that we are debating this resolution rather than the important issues that we should in regards to protecting workers' rights.

Mr. MATSUI. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Indiana (Mr. VISCLOSKY), a member of the Committee on Appropriations.

Mr. VISCLOSKY. I thank the gentleman for yielding me this time.

Mr. Speaker, I would open my remarks by stating that as a Member of this House for the last 18 years, I never remember being so tired, tired of doing nothing, tired of not passing an agricultural appropriation bill, tired of not passing a foreign assistance bill in this House, tired of not passing an energy and water bill in this House.

The gentleman from Ohio in his remarks stated before that a number of points as far as corporate compensation needing shareholder approval was not before the body. He was absolutely right, because the gentleman from California (Mr. MATSUI) wanted to make those important questions part of the real debate today and we were prohibited by the leadership under the rule that provided consideration of this resolution from doing it. What did the gentleman from California want to do as far as making sure real American citizens who owned stock can either approve or disapprove outrageous corporate perks?

Let us talk about corporate housing that is provided to executives. In the First Congressional District, I have had thousands of steelworkers lose their jobs. They have had to sell their house. Nobody is providing them any house and voting on it. We have talked about corporate jets and no one being able to vote on that as far as shareholders are concerned. When my steelworkers come out to Washington, D.C., they take a bus. When we talk about shareholders having an opportunity to vote on reimbursement for living expenses, the people I represent have lost their job and they do not have any money to live on. The only thing I do not have a concern about is sporting events, because they have all the time in the world to go to their children's soccer games and Little League games and basketball games because they have lost their job. They have lost their job. And we were not allowed today to vote on that issue and that is wrong.

Mr. ROEMER. Mr. Speaker, I rise in support of strengthening retirement security in America. Congress should act now to clean up executive mismanagement and check corporate greed that is responsible for the loss over $175 billion in pension savings.

In my home state of Indiana, 55 percent of the workforce has pensions. Over the last year, their losses exceed four and a half billion dollars worth of hard-earned retirement savings. Hooisers like all Americans are shocked by reports of corporate executives who played by different rules, who deceived employees about their company's health, and who skimmed billions from corporations heading toward bankruptcy while thousands of workers witnessed their jobs and pensions evaporate.

The House of Representatives had a chance to enact meaningful reform when the Pension Reform Act, H.R. 3762, was considered last April. However, that bill fails to achieve basic protections reforms that most businesses and workers should agree on such as allowing employees to adequately control their own investments in pensions funds. Nor does it provide for investment diversification, employee representation on pension boards, or improved investment advice. For these reasons, I did not support H.R. 3762 when it was considered by the House last April.

As the pension crisis has deteriorated in recent months, CEOs and corporate executives continue to play by different rules than their employees. The law maintains giant loopholes permitting employers to deceive employees about stock sales and conceal stock options and conflicts of interest. Pension funds are supposed to belong to the employees, but they are still denied the ability to say how their funds are managed.

Although I support the intent of this resolution to stimulate further consideration of pension reform legislation. I believe that the House bill could be improved. For example, I offered amendments requiring corporations to notify their employees when stock levels in their pension reforms exceeded designated amounts. This would encourage workers to diversify their accounts in case of sudden and unexpected downturns in their company stock holdings. I also proposed an amendment requiring corporations to communicate to their workers in clear and understandable terminology with regard to pension rules. Unfortunately, the Rules Committee denied consideration of my amendments on the House floor.

Congress should act now to improve a workforce environment where retired workers now struggle to live with dignity after working for so many years while executives take home disproportionately high benefits at the expense of profits earned from employee-contributed pension plans. The current pension reform legislation fails to make corporate executives play fair or by the same set of pension standards as their workers. I therefore urge rejection of this business as usual resolution.

Mr. STARK. Mr. Speaker, today I rise in opposition to both H. Res. 540 and H. Res. 544. We desperately need to pass meaningful pension security reform. But the plan put forward by Republicans flatly does not pass the test. These resolutions simply call for urging the Senate to comply with the Republican's ill-conceived reforms and then make them permanent.

Republicans can chastise the Senate all they want or put hard hats on corporate lobbyists to make people think they're listening to average, everyday American workers. But it won't change the simple fact that Republican pension reform just isn't enough. In fact, these resolutions are so meaningless that they can only be viewed for what they are: a temporary distraction from the real reform the Republicans have failed to deliver.

President Bush has said, that if ''It's okay for the sailor, it ought to be okay for the captain.'' Democrats agree with the President's rhetoric and have taken it a step further in offering a bill—of which I am an original cosponsor—that truly holds corporations accountable. The Republicans simply allow corporate captains to sink their own companies and let workers and investors go down with the ship.

Corporate executives should be required to face the same rules on stock options and deferred compensation plans as apply to rank-and-file employees. The bill that the Democrats propose would provide workers the same rights to buy or sell company stock in their 401(k) plans as corporate executives have in being permitted to buy or sell company stock obtained through stock options.

President Bush claims, ''It is unfair for workers to be denied the ability to sell stock when executives are free to sell stocks . . .'' and again Democrats completely agree. Corporations rarely restrict their executives' capacity to buy and sell stock from stock options, but many corporations restrict their rank-and-file workers from buying and selling the corporation's stock in their 401(k) plans.

Democrats would eliminate this double standard by ensuring that CEOs adhere to the same restrictions as employees in the buying and selling of their company stock. Our bill would impose tax penalties on executives who sell stock acquired from stock options if the sale violates the restrictions rank-and-file employees face in their own 401(k) plans. Executives don't need any more perks than they already receive. But it's high time this Congress listen to the calls of the rank-and-file workers who want their pensions protected from unscrupulous corporate thieves.

The resolutions before us today are an insult to American workers. I urge my colleagues to vote no on H. Res. 540 and H. Res. 544.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 547, the resolution is considered read for amendment and the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PORTMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## GENERAL LEAVE

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remark and to include extraneous material on the subject of H. Res. 540, the resolution just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## EXPRESSING THE SENSE OF THE HOUSE ON PERMANENCY OF PENSION REFORM PROVISIONS

Mr. PORTMAN. Mr. Speaker, pursuant to House Resolution 547, I call up the resolution (H. Res. 544) expressing the sense of the House of Representatives on permanency of pension reform provisions, and ask for its immediate consideration.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 544

Whereas increasing pension coverage and pension savings is crucial to retirement security;

Whereas the Economic Growth and Tax Relief Reconciliation Act of 2001 provided significant bipartisan pension reforms that would increase pension savings and increase the number of employees covered by employer pension plans;

Whereas these pension reforms are scheduled to expire after 2010;

Whereas a bipartisan majority of the House of Representatives passed H.R. 4931, the Retirement Security Savings Act of 2002, on June 21, 2002 by a vote of 308–70 to permanently extend these important pension benefits;

Whereas failure to enact H.R. 4931 would significantly impact retirement planning and retirement security by eliminating pension reforms that exist under present law; and

Whereas the Senate has not passed the Retirement Security Savings Act of 2002 or equivalent legislation: Now, therefore, be it

*Resolved,* That it is the sense of the House of Representatives that the Congress should complete action in the 107th Congress on the Retirement Security Savings Act of 2002 and present such legislation to the President for his signature prior to adjournment so that American workers can be assured that the pension reforms under present law will not be eliminated.

The SPEAKER pro tempore. Pursuant to House Resolution 547, the gentleman from Ohio (Mr. PORTMAN) and the gentleman from California (Mr. MATSUI) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. PORTMAN).

□ 1845

Mr. PORTMAN. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BRADY), a valued member of the Committee on Ways and Means.

Mr. BRADY of Texas. Mr. Speaker, I thank the gentleman from Ohio for yielding me time and thank him for his leadership in this very bipartisan effort to increase and protect retirement savings.

Let me, as an aside, tell you that retirement security is very important in my district. I have many Enron workers in my district. Many of them are my neighbors who have lost their jobs, lost their whole retirement savings through no fault of their own. Listening to the debate tonight, I continue to be ashamed of those in Congress who continue to try to score political points off the misery of our Enron workers and shareholders.

We have an opportunity, both in urging the Senate to take this bill off their calendar and to help us protect retirement savings, and we have it in this resolution as well, where we are trying to protect improvements that have been made to help people save.

We simply do not save enough in America. For the life of me, I do not know why Washington insists on creating obstacles to savings, punishing people for trying to put money aside for their education or their retirement or for health care, for a rainy day. Under the bill that we passed in a very bipartisan way, we helped remove those obstacles.

Unfortunately, unless we make those incentives permanent, in 10 years we are going to make it harder again for people to save. Without the Senate taking this bill from the calendar, where it has remained for quite some time, too long, the maximum amount that you and I can contribute to our IRA each year will be cut from $5,000 to $2,000, at a time we need it the most. The most that we can contribute to our savings plans at work will be cut almost $5,000, again at a time when inflation adds up and we need those savings the most.

This catch-up provision for people, especially women, who worked at home while others set up their business or worked, who can make catch-up retirement contributions, that will be eliminated. Also the portability, which means when people move from job to job, like a backpack they can take their pension retirement with them easily, that will be erased as well.

So we have added expenses and obstacles and disincentives to savings that simply do not belong there. Congress was wise to remove it. We would be much wiser to make it permanent.

I support this resolution, and anyone who truly cares about savings ought to do the same.

Mr. MATSUI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is kind of interesting, because I do not have anybody that wants to speak. This bill is so meaningless, so irrelevant, so worthless, that not one of my colleagues on our side of the aisle wants to speak. I think the other side probably has two or three, probably because they want to say something, I do not know what. But again, this is a resolution that asks the other body to pass a bill that we passed.

Now, under the rules of the institution, of the Congress, after we pass a piece of legislation we enroll it and then we send it over to the other body so they know they can either take action or take no action. If they decide to take no action, then the next logical thing is, maybe you do not want to walk over there, maybe the 5-minute walk takes too long, how about just calling them up and saying, hey, what is wrong with the bill we sent over, because we want to move it. Then maybe you can have a discussion. But, instead, we have to pass a resolution, keep all the staff here; and no one really wants to speak about it.

I will tell you why this is so irrelevant. This is unbelievable. It is so irrelevant because this will not take effect until 2010. This will not take effect until the year 2010, 8 years from now. We are not even going to be around here. Maybe that is why we are doing it now, because we want to make sure our legacy is going to be effective in 2010. This is not going to have any effect, even if it became law, until the year 2010.

Well, let me just say this, if I may, Mr. Speaker, because I do not want to get into the substance too much, but I think it does require a little discussion about the substance. In this proposal that was passed by the House, and is not being passed by the other body and will not take effect, at least the extension of this law, for 8 years, 84 months, 8 years, in this proposal we actually make significant changes in the anti-discrimination law, that is a very technical law, and also the top-heavy rules.

I have a letter dated April 11 when the bill was being considered by the House by Daniel Halperin, who just happens to be a professor of law at Harvard University, an expert on pension law; and he says if this bill is allowed to continue and take effect, at that time it had not taken effect, but it is in effect now, it could allow about 80 percent of the ordinary workers of a company that are non-highly compensated to be excluded from the plan, the pension plan. Eighty percent of the workers could be excluded from the pension plan. You just help the high-level employees.

Then I have a letter from a professor from the University of Alabama named Norman Stein, not a real liberal institution, Alabama; but he indicates that this bill was cobbled together by the pension industry.

Of course, Karen Ferguson, director of a group that makes sure that beneficiaries are adequately taken care of on pension benefits, basically said this bill is really going to do damage to the average worker in America because it is going to create a situation because of the top-heavy rules and anti-discrimination rules where pension benefits are going to be eliminated.

The gentleman from Ohio (Mr. PORTMAN) has said, because I remember the debate he had last time, that, no, what is going on, the reason why Americans are not having more pension benefits is because these rules are too complicated and it does not do enough for the highly compensated employees. So why would a manager, an executive, set up a pension plan if he is not going to benefit?

The reason he does not set up that plan, I say to the gentleman from Ohio,

is because they found a way to get around it. These high-level executives had companies like Arthur Andersen who advised them in tax laws. We know what that is really all about. So what they have done was they set up rules like Ken Lay had in which he was able, without being taxed, to have his deferred compensation placed in an offshore trust account, so that when he finally retired and when Enron went bankrupt and all the employees lost their 401(k) plans, he was able to then get millions of dollars in deferred compensation. So he found a way around dealing with pension benefits. He had a defined benefit plan, and the Enron employees had what is known as a defined contribution plan, subject to the stock market; and they lost everything.

Of course, you have all kinds of gimmicks that insurance companies use, for example the split dollar plan, and we all heard about that, because many folks were worried that was going to be eliminated. So that is another plan that highly compensated employers could engage in.

So they really do not need to set up system-wide plans in companies, because of the fact that they are being taken care of through the Tax Code or through other mechanisms that have been thought through by the Arthur Andersens and all those smart people that know how to deal with tax laws.

What we really should be doing instead of passing meaningless resolutions is really try to deal with the average American's pension benefit. There are only three ways when a person is ready to retire that they think about their retirement. One is personal savings, and we know a great majority of Americans do not have personal savings because they have family responsibilities, kids going to college. So most of the time even families that make $70,000, $80,000 a year, spend that money right away on their families, because those are just necessities. So they do not have any savings, except their house. That is the only thing they have.

Then you have 401(k)s. Because we do not have these defined benefit plans in existence anymore, it is basically 401(k) plans. You saw what happened when the market went down 40 percent the last 18 months, since the President was sworn into office. So that obviously is subject to the economy, and subject to the global economy as well.

Of course, the one thing that at least the Enron employees and the WorldCom employees told me when they came to Washington, they said, ''At least I have my Social Security benefits.'' But we know about Social Security benefits, because the President wants to privatize Social Security. The President wants to make Social Security subject to the stock market.

Well, if the President gets his way and if we do not take action on the 401(k)s, if we do not do something about these highly compensated employers and we extend this law beyond 2010, I think we are going to do major damage to the baby boom population. We have had all kinds of studies in America now that people 45 years and older, they are not going to be ready for retirement. In fact, all they are going to have is maybe $20,000 or $30,000 in their 401(k) plans. If they live another 20 years, that is going to be gone within a couple of years. All they have is Social Security, and that may not be secure if the President is successful in privatizing Social Security.

So I have to ask myself, what are we doing here at 7 o'clock in the evening debating a bill that is meaningless and not taking up some of the real important problems of America? Well, it is because you cannot do it. My colleagues on the other side of the aisle cannot pass these other bills that are really critical to the American public. They cannot deal with the national economy. That is why we are fooling around with meaningless resolutions. That is why I have no colleagues that want to speak on this, because it is meaningless.

Mr. Speaker, I reserve the balance of my time.

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would suggest that perhaps the reason there are not a lot of people who want to speak in opposition is because this has been a very popular piece of legislation. It passed the House by over 400 votes. Even in the context of the tax cut, which was quite a partisan exercise, it passed with 308 votes. It is good legislation.

I would love the opportunity to address some of the concerns that the gentleman from California (Mr. MATSUI) raised, and I would like to do so in a moment.

Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. WELLER), a valued member of the Committee on Ways and Means, who was instrumental in putting together this legislation, particularly with regard to the very important provisions to help multi-employer plans. There was tremendous complexity surrounding these multi-employer plans. Section 415 needed to be reformed, something that had been talked about for years. Finally, with this legislation we got it done. I hope my colleague will address that.

Mr. WELLER. Mr. Speaker, of course I rise in support of this resolution which, frankly, is very, very important; and I commend the gentleman from Ohio (Mr. PORTMAN) for the leadership he has given on this issue.

You know, if you listen to the rhetoric of my friends on the other side of the aisle, you can see they are, frankly, laying the groundwork for a tax increase. They opposed permanency of the Bush tax cut, they are opposing permanency of the individual provisions, whether marriage penalty or death tax, and even the most popular provision, which, of course, is the pension provisions that we have before us today.

They are opposing it; and, frankly, a vote against this resolution essentially is a vote in favor of a tax increase. As you can see from the rhetoric and their procedural moves that they always take, they are trying to stall, stymie and delay making permanent the Bush tax cuts, because they believe that money can be better spent here in Washington than hardworking Americans can spend it back home. I believe, as I know the majority of my colleagues do, that we should allow working Americans to keep more of what they earn.

Today we are, of course, talking about the opportunity to improve retirement savings. This House passed this with overwhelming bipartisan support. In fact, the Bush tax cut, the final version passed with overwhelming bipartisan support. Unfortunately, it was not permanent; but we passed legislation increasing opportunity for retirement savings, which benefits every American who pays taxes. We increased the opportunity to give a larger amount to your individual retirement accounts, increased that from $2,000 to $5,000. We increased what you can put into your 401(k) from $10,000 to $15,000.

I would note that there are catch-up provisions. People like my sister Pat, who are out of the workforce for a few years, staying home with the kids, the family income is less and they were not able to set aside much or anything for retirement savings. Now they can make a catch-up contribution once they turn 50, which will be a great benefit to stay-at-home moms and empty-nesters. Thanks to the Bush tax cut, that is now law. Unfortunately, it is temporary.

I would also note, as the gentleman from Ohio (Mr. PORTMAN) pointed out, we had an important reform that benefited over 10 million construction workers, building tradesmen and women, all across this country, who benefit from the removal of the caps put in place under section 415, which affects the multi-employer pension funds, which are basically labor union and building trade pension funds. Those artificial caps have been in place for far too long. Thanks to the Bush tax cut, they have been removed. And for a couple like Larry Kohr of Peru, Illinois, and his wife, he saw his take-home pension that he can live on, now that he has retired, essentially double by removing those artificial caps. There is no science and no reason to have them; nobody had just gone back to fix them.

□ 1900

So that section 415 provision, which claims a lot of bipartisan support unfortunately will expire unless we make it permanent.

That is why I was pleased earlier this year that the House of Representatives passed with a vote of 407 Members, the vast majority of Democrats; only a

very small, narrow group of Democrats voted against making permanent this legislation. Unfortunately, the Senate has not yet taken up this legislation. My hope is that the House and Senate can work together in a bipartisan way and make permanent efforts to eliminate that cap on section 415, as well as increase opportunities for retirement savings. So let us really get to what the real issue is here before us.

The question before us today is, do we make permanent the portion of the Bush tax cut which gives increased opportunity for retirement savings, helping construction workers, helping those who have IRAs or 401(k)s, helping empty-nesters or stay-at-home moms do what we all need to do more of, and that is to set aside more for our retirement savings. Think about this: unless we make it permanent, those opportunities go away. That is a tax increase on savings; that is a tax increase on working Americans. This is a simple vote, and that is if you vote ''no,'' you are voting to raise taxes on all those who wish to save for their retirement.

Mr. Speaker, I urge an ''aye'' vote, and I commend the gentleman from Ohio for his resolution before the House.

Mr. MATSUI. Mr. Speaker, it is my understanding that the gentleman from Ohio (Mr. PORTMAN) is the only other speaker on their side, and I am the last speaker, the only speaker on my side, and if the gentleman is, and we can have some understanding that we are going to kind of keep it light and short, I will yield back the balance of my time, with that understanding.

Mr. PORTMAN. Mr. Speaker, I thank the gentleman. I do not know about keeping it light, but we will try to keep it short.

Mr. MATSUI. Mr. Speaker, I yield back the balance of my time.

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume.

I guess it has been a helpful discussion. What we are doing here today is we are trying to shed light on the fact that the House-passed legislation, which made these good retirement changes permanent, which the other body chose not to do that; it had to be done on a temporary basis, only for the next 8 years.

We think it is very important for the purposes of planning, and what is more important than retirement planning? It is very important to the person who is planning to have some permanency. It is important to the individual worker. People need to plan for their retirement. It is planning for more than 8 years out. We need to know it is going to be there for the baby boom generation; we need to know that it is going to be permanent changes in law. For the employer, particularly the small employer, who is thinking about getting into the pension business for the first time; only 20 percent of those with 25 or fewer employees now offer pensions. For those people, they need to be able to plan. So not to have this be permanent is bad policy. It makes no sense at all. That is what we are doing today. We are trying to shine some light on this issue so that our friends in the other body will move.

Now, let me just talk a little bit about what this is all about. It is really three general areas: First, allowing everyone to contribute more to their 401(k)s and their IRAs. This could not come at a more important time. The fact that you can contribute another $1,000 into your IRA account this year is very important to people, and they are taking advantage of it. In the first 6 months of this year alone, there has been a 25 percent increase in IRA contributions, and it is needed, and never needed more than now.

With regard to 401(k)s, this year you can put another $500 in, plus a catch-up, as the gentleman from Illinois (Mr. WELLER) talked about, another $500. Over time, another $5,000 and $10,000, up to $15,000. This is extremely important, again. I would like to accelerate that. I would hope that this House will take that up at some point so that we can immediately allow people to put more aside for their retirement. But at a minimum, let us make what we did permanent.

The catch-up provisions are extremely important to the baby boomers. The gentleman from California (Mr. MATSUI) talked about the baby boom generation not being prepared for retirement. It is true. Seventy-five million people have no retirement plan at all, other than what they might have saved in their own personal savings. They have no access to a 401(k), a simple plan, any kind of plan from their employer. We need to help these people.

We therefore said if you are over 50, you get to put in even more into your retirement plan, which is particularly helpful for women who have taken time out from the workforce to raise a family, and now want to come back in and need to be able to put together that nest egg quickly.

The second general area is portability, enabling people to go from job to job in a seamless way to move their retirement savings.

Finally, we permit for simplification of the plan, to help small businesses to be able to offer these plans. The gentleman from California (Mr. MATSUI) actually talked about it earlier, and I was going to get into it. I would ask the gentleman's indulgence, instead of me getting further into that issue, if I could yield some time to the gentleman from Oklahoma (Mr. SULLIVAN), who is now here, to speak on the general issue.

I instead will cut my remarks short, except to say this, and that is that this is all about helping people save more for retirement. This House has passed this on a bipartisan basis, over 400 votes. What we are saying here today is it is time to move to make that permanent so people can plan. It is common sense policy. The Senate has not acted, the House has, the President is ready to sign the bill. Let us move forward.

Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. SULLIVAN) as a final speaker.

Mr. SULLIVAN. Mr. Speaker, today I rise in support of House Resolution 544. As a sponsor of this legislation, I feel it is important for Congress to make permanent the Economic Growth and Tax Reconciliation Act passed into law last year. I would like to thank my distinguished colleagues, the gentleman from Ohio (Mr. PORTMAN) and the gentleman from Maryland (Mr. CARDIN), for spending several years crafting this bipartisan legislation.

This measure includes significant pension reforms aimed at modernizing retirement security. The law is scheduled to sunset after December 31, 2010. People throughout the First District of Oklahoma and all across America are restricted in planning for their retirement because of an arcane Senate rule that makes the entire tax relief package, including the retirement savings provisions, expire in just 10 years. Retirement plans are based on rules that need to be consistent over a career, not just 10 years. I do not base my future retirement plans on the next 9 years, so I do not expect to legislate and encourage that standard for my constituents and all Americans. The law, as passed last year, gives employees the additional resources to appropriately plan for their retirement. The act contains many significant provisions that will be extremely beneficial to employees.

First of all, we allowed workers to invest more money into their 401(k) and pension plans, as well as IRAs, from $2,000 to $5,000. Secondly, the House modernized pension laws to meet the challenges of an increasingly mobile workforce that is likely to have several jobs during their career. The resolution also allows workers to become vested in their pension plans faster.

In addition, the measure allows workers age 50 and older to make catch-up contributions, a provision that will significantly help women who are more likely to spend more time away from the workforce.

Finally, the bill modernizes pension laws and provides regulatory relief to encourage more small businesses to offer retirement plans.

Mr. Speaker, I urge my colleagues to adopt this measure.

Mr. PORTMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate has expired.

Pursuant to House Resolution 547, the resolution is considered read for amendment and the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PORTMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, the Chair will now put each question on which further proceedings were postponed today in the following order: H. Res. 540, by the yeas and nays; and H. Res. 544, by the yeas and nays.

The Chair will reduce to 5 minutes the time for the second electronic vote.

## SENSE OF THE HOUSE THAT CONGRESS SHOULD COMPLETE ACTION ON H.R. 3762, PENSION SECURITY ACT OF 2002

The SPEAKER pro tempore. The pending business is the question of agreeing to the resolution, House Resolution 540, on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This will be a 15-minute vote followed by a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 258, nays 152, not voting 22, as follows:

[Roll No. 414]

YEAS—258

Aderholt
Akin
Armey
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bereuter
Berkley
Berry
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Matheson
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Udall (CO)
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NAYS—152

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Becerra
Bentsen
Berman
Blagojevich
Blumenauer
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Clay
Clayton
Clyburn
Condit
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Harman
Hastings (FL)
Hilliard
Hinchey
Hoeffel
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Markey
Matsui
McCarthy (MO)
McCollum
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mollohan
Moran (VA)
Nadler
Napolitano
Neal
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (MS)
Tierney
Towns
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Weiner
Wexler
Woolsey
Wynn

NOT VOTING—22

Bachus
Bishop
Bonior
Borski
Callahan
Ehrlich
Gutierrez
Hinojosa
LaFalce
Maloney (NY)
Mascara
McDermott
McKinney
Mink
Murtha
Obey
Roukema
Slaughter
Stump
Thompson (CA)
Thurman
Waxman

□ 1932

Mr. DICKS and Mr. LAMPSON changed their vote from ''yea'' to ''nay.''

Messrs. GREEN of Texas, PHELPS, BOYD, and Ms. CARSON of Indiana changed their vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for the next electronic vote.

## EXPRESSING THE SENSE OF THE HOUSE ON PERMANENCY OF PENSION REFORM PROVISIONS

The SPEAKER pro tempore. The pending business is the question of agreeing to the resolution, House Resolution 544, on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 291, nays 118, not voting 23, as follows:

[Roll No. 415]

YEAS—291

Aderholt
Akin
Armey
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bentsen
Bereuter
Berkley
Biggert
Bilirakis
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Brady (PA)
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Condit
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Engel
English
Etheridge
Everett
Fattah
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Grucci
Gutknecht
Hall (TX)

Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Matheson
McCarthy (MO)
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
Meeks (NY)
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Pallone
Pascrell
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spratt
Stearns
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—118

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Barrett
Becerra
Berman
Berry
Boyd
Brown (FL)
Brown (OH)
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Crowley
Davis (IL)
DeFazio
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Eshoo
Evans
Farr
Filner
Ford
Frank
Gephardt
Gonzalez
Gutierrez
Hastings (FL)
Hilliard
Hinchey
Honda
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kaptur
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Markey
Matsui
McCollum
McGovern
McNulty
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller, George
Mollohan
Nadler
Napolitano
Neal
Oberstar
Olver
Ortiz
Owens
Pastor
Payne
Pelosi
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Scott
Serrano
Sherman
Smith (WA)
Solis
Stark
Stenholm
Strickland
Stupak
Tanner
Taylor (MS)
Thompson (MS)
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Weiner
Wexler
Woolsey

NOT VOTING—23

Bachus
Bishop
Bonior
Borski
Callahan
Ehrlich
Greenwood
LaFalce
Maloney (NY)
Mascara
McDermott
McKinney
Mink
Moran (VA)
Murtha
Obey
Oxley
Roukema
Slaughter
Stump
Thompson (CA)
Thurman
Waxman

□ 1944

Ms. JACKSON-LEE of Texas, Ms. MILLENDER-McDONALD, and Ms. BROWN of Florida changed their vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. RYAN of Wisconsin. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 544, the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.J. RES. 111, CONTINUING APPROPRIATIONS, FISCAL YEAR 2003

Mr. HASTINGS of Washington (during consideration of the Motion to Instruct on H.R. 3295), from the Committee on Rules, submitted a privileged report (Rept. No. 107–694) on the resolution (H. Res. 550) providing for consideration of the joint resolution (H.J.Res. 111) making continuing appropriations for the fiscal year 2003, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## REPORT ON RESOLUTION WAIVING A REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. HASTINGS of Washington (during consideration of the Motion to Instruct on H.R. 3295), from the Committee on Rules, submitted a privileged report (Rept. No. 107–695) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

## REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2215, 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. HASTINGS of Washington (during consideration of the Motion to Instruct on H.R. 3295), from the Committee on Rules, submitted a privileged report (Rept. No. 107–696) on the resolution (H. Res. 552) waiving points of order against the conference report to accompany the bill (H.R. 2215) to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4600, HELP EFFICIENT, ACCESSIBLE, LOW COST, TIMELY HEALTH CARE (HEALTH) ACT OF 2002

Mr. HASTINGS of Washington (during consideration of the Motion to Instruct on H.R. 3295), from the Committee on Rules, submitted a privileged report (Rept. No. 107–697) on the resolution (H. Res. 553) providing for consideration of the bill (H.R. 4600) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, which was referred to the House Calendar and ordered to be printed.

## MOTION TO INSTRUCT CONFEREES ON H.R. 3295, HELP AMERICA VOTE ACT OF 2001

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Ms. EDDIE BERNICE JOHNSON of Texas moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 3295 be instructed to take such actions as may be appropriate to ensure that a conference report is filed on the bill prior to October 1, 2002.

□ 1945

The SPEAKER pro tempore (Mr. PENCE). Pursuant to clause 7 of rule XXII, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) and the gentleman from Ohio (Mr. NEY) each will control 30 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

This motion instructs the conferees on H.R. 3295, the Help America Vote Act, to complete their work and file a conference report prior to October 1, 2002.

Mr. Speaker, less than a week ago I joined a number of Members at this podium and recounted how allegations of voter intimidation, inaccurate voter registration lists, arbitrary ballot counting standards, and antiquated machinery deprived so many citizens of their right to vote and have their vote counted during the 2000 election.

Recent primary elections in Florida and elsewhere have only confirmed that the problems of 2000 will not go away until we pass and enact meaningful election reform legislation reform standards, and we must also provide State and local authorities with resources to improve their election systems from top to bottom.

It is really very simple, and so I ask how many times do we have to come to this podium and plead for reform.

I am here to tell my colleagues that we will come before them I guess as many times as it takes. This is a number one priority for the Congressional Black Caucus because we believe so strongly in democracy, and this is the crux of democracy. There is no democracy when we shut out the first amendment right and not allow people to cast their votes that are eligible and have those votes counted.

So we cannot be silenced until this body answers the call for election reform. We in Congress have within our power, indeed almost within our very grasp, legislation that will take giant strides to remedy the disenfranchisement of the last election. It has not been an easy fight to get where we are today, but we are just inches away from the comprehensive legislation that will secure the constitutional right to vote for millions of Americans. We must pass this bill, and we must send it to the President for his signature before another day passes.

I am proud to say that in the fight for election reform we have had many foot soldiers. I want to thank the gentleman from Maryland (Mr. HOYER), who has been battling every day since the 2000 elections to extend these important protections to all of our Nation's voters. His leadership is getting us to where we are today on this legislation. It has been limitless, and I thank him for everything he has done.

In that same spirit, I must also thank the gentleman from Ohio (Mr. NEY) for his hard work in helping us bridge the differences between the two bills. Indeed, I believe that all members of the conference committee deserve our gratitude for their work on this challenging task.

We also have had the terrific support from our colleagues from the other Chamber, and I would like to especially commend the efforts of Senator CHRISTOPHER DODD, who has worked alongside the caucus and the civil rights communities to make certain that the issues we care about most deeply are being addressed in the final bill.

Finally, I must thank my colleagues in the Congressional Black Caucus and, in particular, the gentleman from Michigan (Mr. CONYERS) and the gentlewoman from California (Ms. WATERS) for working tirelessly. We have invested so much energy and so much passion in seeing the goal of making every vote count realized, and now I salute all of the people who have remained steadfast.

As many of my colleagues know, the CBC has been holding hearings and forums and speaking out continuously for the past 21 months on this issue. I believe when it comes to election reform, yet again, we have served as the conscience of the Congress.

Soon after the Supreme Court announced its decision on Bush v. Gore, the caucus resolved to develop legislation that addressed these spectacular failures in the 2000 election. We resolved to make that legislation our number one priority.

We fought hard to get the Help America Vote Act introduced and passed by the House of Representatives, and we worked with the Senate to make sure that the protections they passed were even stronger than those contained in our bill.

Mr. Speaker, these bills are not far apart and we cannot reconcile them. This is why I stand here before my colleagues today to encourage conferees to complete their work and send us a bill that can be signed into law.

We also know that the legislation before the conferees is not perfect. I do not think I have ever seen a perfect bill, but it is a tremendous first step toward meaningful reform. The legislation will help protect and secure an electoral system in which all Americans are able to register as voters, remain on the rolls once registered, and vote free from harassment.

Mr. Speaker, our democracy begins and ends with the fundamental right to vote. Congress must act immediately to ensure that every American has the right to vote and to have their votes counted.

Time is running out for the 107th Congress. We have come so close to the compromise, and the price for not passing election reform is far too high. It is imperative that the conference committee finish their hard work and come to an agreement before October 1 because we cannot afford to let this opportunity slip away.

Mr. Speaker, I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will remind Members that it is not in order to cast reflections on the Senate; that it is not in order to refer to a Senator except as provided in clause 1 of rule XVII.

Mr. NEY. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I stand tonight applauding the efforts of our colleague, the gentlewoman from Texas; and I stand to support this motion to instruct. As we like to say around here, work, work, and we mean it this time on this. It is a good thing to do.

The Help America Vote Act could not be here if it were not for my colleague from Maryland (Mr. HOYER) and all the other Members on both sides of the aisle that supported this measure. It is a crucial measure. It is important to every citizen in the United States, and the conference committee has to continue to communicate, communicate with the advocacy groups, local election officials, everybody who has this bill near and dear to their heart.

I commend the gentlewoman from Texas, all of those who have worked so hard for this bill. We cannot lose this bill. We have to continue to work. I know we are running out of time, but I am sure that many minds can come together and can produce a product that we are going to be proud of long after we are not serving in this body.

The Help America Vote Act is good for the Nation. I fully support the gentlewoman's motion to instruct.

Mr. Speaker, I reserve the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, I thank the gentlewoman for yielding me the time.

I want to congratulate her and thank her for the extraordinary job that she has done over the last 18 months on this particular issue. She has been tireless in her efforts to promote the assurance that every American not only has the right to vote but that every American will have their vote counted correctly.

I also want to mention two of my very good friends and colleagues on the floor, the gentlewoman from Florida (Ms. BROWN) and the gentlewoman from Florida (Mrs. MEEK), two members from Florida who firsthand experienced and their constituents experienced the difficulties of voting in November of 2000.

I also want to recognize the gentleman from Ohio (Mr. NEY), our chairman, who has done such an outstanding job getting us to this point. Without his measured and effective leadership, we would not be where we are.

I want to go back to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) because as chairwoman of the Congressional Black Caucus and vice chair of the Democratic Caucus Special Committee on Election Reform she has tirelessly advocated that the 107th Congress keep its eye on the prize and pass meaningful, comprehensive election reform.

Mr. Speaker, in only 42 days this Nation will hold its first Federal election since November 2000. Nobody can predict with certainty how smoothly those elections will go. Certainly we experienced a primary in Florida that did not go well. After almost 2 years, studying what went wrong in November 2000, I am convinced that confidence in this Nation's election system will not be restored until this Congress

enacts meaningful national standards and offers State and local authorities the resources to improve their election infrastructure.

I am pleased to report, as the chairman has said, that Congress is on the threshold of doing just that, thanks in large measure to my colleague and good friend from Ohio (Mr. NEY), whom I have already mentioned. We are closer than ever to enacting the most comprehensive package of voting reforms since the Voting Rights Act of 1965, reforms that will require States to offer provisional ballots to all voters; reforms that will require States to maintain state-wide computerized registration lists to ensure the most accurate, up-to-date rolls and minimize the number of voters who are incorrectly removed from the rolls; reform that will reward States for retiring obsolete voting machines, especially the notorious punch card machines and their dangling chads; reforms that will require voting systems to be accessible to all individuals with disabilities, including nonvisual accessibility for the blind; reforms that will allow voters to review and correct their ballots before they are ultimately cast. We call that second-chance voting. Every voter ought to be assured that their vote is correctly cast and will be accurately counted.

Reform that does not weaken, let me reiterate this, reforms that do not weaken any existing voting rights laws and includes meaningful enforcement; reform that ensures military and civilian voters who live and work overseas are able to vote and have their vote counted.

Mr. Speaker, this motion is intended to ensure that we on the conference committee complete our work prior to October 1, 2002. Given the extraordinary progress the conference committee has made in the past 14 days, there is no legitimate reason we cannot meet that deadline. I know the chairman shares my view on that. Indeed, given the larger context in which we operate, I would submit that this Congress has a moral responsibility and obligation to enact election reform before we adjourn the 107th Congress.

Mr. Speaker, over the last year, this country has committed vast resources to ridding the world of those who would employ the tools of terror to destroy systems of government that derive their legitimacy from the ballot box. In just the past few weeks, we in Congress have been challenged to contemplate the use of overwhelming military might to bring to heel one of the great despots of the past 50 years, a figure whose utter contempt for democracy and the people he rules is the only reason he has held power for so long.

□ 2000

As we consider such profound measures to extend democracy where it does not now exist and strengthen it where it is fragile, we have an urgent, moral responsibility to do the same at home. I urge adoption of this motion. I congratulate the chairman for his support of this motion and last week's motion to urge us to complete our work. This motion is timely. Passage is late, but it is never too late to do the right thing.

Mr. NEY. Mr. Speaker, I reserve the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. BROWN).

Ms. BROWN of Florida. Mr. Speaker, today, September 24, I stand before this body in our Nation's Capitol, nearly 2 years after the Supreme Court selected the President of the United States. To this day nothing has been done, while the American people wait and wait. No new laws have been signed. No agreements have been reached to correct the 2000 election problems.

In fact, the Bush administration clearly shows that election reform is not a part of their agenda. Immediately after the 2000 election, the only legislative item that was brought up has been tax cuts, tax cuts, tax cuts. It does matter who is in charge. I heard one of the committee chairmen on television discussing Congress giving war powers to the President, and he said over and over again, over and over again, the President is the only person that is elected by all of the people.

Time out. Did I miss something? Over 500,000 Americans voted for Al Gore. Al Gore, not George W. Bush. The Supreme Court decided on a 5–4 decision that George W. Bush would be the President, and to date nothing has been done to correct it.

Let me tell Members about Florida. With 16 million people, Florida spent just $32 million for election reform efforts. Just to the north of us, Georgia, with 8 million, spent $54 million. In an effort to distract the American public from issues like election reform, health care and prescription drug coverage, which was promised to our seniors, in the middle of a mid-term election we are distracted by a war. I think the American people need to weigh in; and if we want to take the questions about the election out, then we need to pass a bill and move forward with election reform.

Mr. NEY. Mr. Speaker, I reserve the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Mrs. MEEK).

Mrs. MEEK of Florida. Mr. Speaker, I thank the gentlewoman for yielding me this time, the chairman of the Congressional Black Caucus.

Mr. Speaker, I rise in strong support of the motion to instruct the election reform conferees to produce a conference report and produce it as soon as possible. Election reform is long overdue. We continually come to this podium and stress the importance of election reform, but no one seems to be listening. That is, those people who are in the leadership are not listening. If they were, election reform would have come to the floor many, many months ago.

How many more voting catastrophes like the week before last in Florida will be required for this Congress to get the message that our people need real election reform, and they need it now? I am just wondering how many more catastrophes must happen.

I do not have enough time to detail all of the many problems that are wrong with elections in this country, not only in south Florida, but manifested much more strongly in south Florida. I have read the same newspaper and magazine accounts that other Members have read, suggesting that election reform conferees have not yet been able to work out their differences. I do not see why there should be so many differences in a right that the Constitution gives each of us. It is perplexing to me, and it appears that election reform may be dead for this particular session just because of this kind of treatment.

This outcome is absolutely unacceptable. It is unacceptable to the people of the United States of America that we as a Congress cannot pass an election reform bill. We can send it to the President for his signature before this session ends. That is extremely important, Mr. Speaker. The voting of the last 2 weeks revealed the many problems that plagued the 2000 Presidential election. Why does it take so long to get the idea? So we are back again. It is a nightmare.

Mr. NEY. Mr. Speaker, I reserve the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me add my appreciation to the conferees on the House side, and particularly the gentleman from Maryland (Mr. HOYER) and the gentleman from Ohio (Mr. NEY) for the diligent work that they have offered. Let me also acknowledge and give appreciation to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON), the Chair of the Congressional Black Caucus, and someone who has captured the essence of the vitality of this legislation by pushing and encouraging its passage.

I rise to support this motion to instruct, particularly on the basis of the hard work of the gentlewoman from Florida (Ms. BROWN) and the gentlewoman from Florida (Mrs. MEEK) and the gentleman from Florida (Mr. HASTINGS), as well as the Democratic Task Force which I had an opportunity to participate in. I say that because we have seen around the country in every place that we have gone hearings that have indicated the great need for election reform.

The work that was done in the Committee on the Judiciary, of which I am

a member, headed by the legislative initiative of the gentleman from Michigan (Mr. CONYERS), the ranking member, captured the ailments, the illness of the election system and tried to put together a legislative initiative that was encompassing, that was embracing, that answered the questions about the many horror stories we heard in November 2000: individuals turned away; intimidation at the polls; people who registered to vote and yet were turned away. It is imperative before we go into the Federal elections that we come together in a consensus and pass election reform.

I do feel that the House conferees have been working together in moving toward final passage, and I believe the other body has the same amount of focus. It is now time to set a time frame for us and not let this legislation die in this session. I do not believe anyone desires it to do so. I believe the American people want to see election reform.

Mr. Speaker, after 9–11 when we have all recommitted ourselves to the values of this Nation, the values of democracy and freedom and equality and the right to speak one's mind, it would be a tribute to again reinforce our values by passing such a legislative initiative as election reform.

Mr. NEY. Mr. Speaker, who has the right to close?

The SPEAKER pro tempore (Mr. PUTNAM). The gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) has the right to close.

Mr. NEY. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, this is an important motion to instruct. I appreciate the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) for her insight and her input into this process. All of the speakers that participated tonight have added greatly to the process. This is an important measure. America needs it, and I appreciate this motion to instruct because it will give us an additional push and say this is the sense of the House. I urge all of my colleagues on this side of the aisle to support the motion to instruct.

Mr. Speaker, I yield back the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard some powerful words this evening from my colleagues on how important it is that Congress pass election reform legislation, and pass it quickly. Although it will not affect the November elections, they are approaching and there simply is no time to waste.

As we all know, the most fundamental issue facing all of us during this Congress is restoring the public's faith in democracy. To restore that faith in democracy, we must make sure that every vote cast is counted. We have said repeatedly that we have been attacked because of the jealously of our freedom. We must make that freedom real, and the only way we can do that is to make sure that every vote cast is counted and is cast without intimidation.

The legislation we have passed will take important steps toward protecting the sacred right to vote. It is time that we take action. House and Senate conferees have come so close to a compromise on H.R. 3295 and now they must finish the job. I call upon members of the conference committee to reach agreement before October 1 and submit the legislation to us for final passage. I am in strong support of this motion to instruct.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the motion to instruct has expired.

Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes each:

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The SPEAKER pro tempore (Mr. PUTNAM). Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. WELDON) is recognized for 5 minutes.

(Mr. WELDON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. PETERSON) is recognized for 5 minutes.

(Mr. PETERSON of Pennsylvania addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. HINOJOSA) is recognized for 5 minutes.

(Mr. HINOJOSA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## JUDICIAL CODE OF CONDUCT PRIVACY CLARIFICATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois (Mrs. BIGGERT) is recognized for 5 minutes.

GENERAL LEAVE

Mrs. BIGGERT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

Mrs. BIGGERT. Mr. Speaker, I rise today to join my colleague the gentlewoman from New York (Mrs. MALONEY) in introducing the Judicial Code of Conduct Privacy Clarification Act. As the title suggests, this bill would clarify a provision in title V of the Gramm-Leach-Bliley Act that deals with privacy protections for consumers.

Gramm-Leach-Bliley was landmark legislation that for the first time permitted companies to engage in banking, insurance and securities transactions simultaneously. While considering these new freedoms for businesses to operate across lines, Congress also wanted to ensure that consumer privacy would not be placed at risk.

Title V sought to address this issue by giving regulators latitude to enforce privacy provisions among financial institutions. Unfortunately in interpreting the language of the law, some confusion has arisen over what specifically those financial institutions might be. In seeking to clarify the confusion, the Federal Trade Commission concluded that financial institutions include any business that, and I quote, significantly engages in financial activities. What is the definition of ''significantly''? Well, it could be as little as once a year. And what is a financial activity? There are four: debt collecting, financial advisory activities, tax planning preparation and advising, and leasing real or personal property.

Okay, that is fair enough. But in writing its regulations in this way, the Federal Trade Commission appears to have unintentionally swept under its umbrella the one group of professionals that already is governed by the strictest possible confidentiality or privacy

regulations. What group is this? Attorneys.

Attorneys already are bound by a duty of confidentiality enforceable under the laws of all 50 States that prevents misuse of client information and provides a higher degree of privacy than Gramm-Leach-Bliley. For example, lawyers in my home State of Illinois are prohibited from releasing confidential information. Our code reads, ''Except in certain specified circumstances, a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.''

And Illinois is no exception. All 50 States have equally restrictive language. In all 50 States, lawyers who violate these laws face disbarment and/or other penalties that are much more onerous than those for a violation of title V under Gramm-Leach-Bliley.

Do attorneys significantly engage in financial activities as defined by the FTC? Yes. Some attorneys do give tax planning advice. Others may handle debt collection cases. Still others may take up cases relating to the other two named financial activities, providing financial advice or leasing real or personal property. Yet in order to comply with the privacy provisions under Gramm-Leach-Bliley, these attorneys now run the risk of violating the client confidentiality restrictions placed on their profession.

Every attorney who engages in any of the four defined financial activities for a noncorporate client must mail to that client a privacy notice, every year for as long as he or she is in business. And what does that privacy notice convey? It informs clients that they may direct their attorney not to share their personal information with other entities, the so-called opt-out provision of Gramm-Leach-Bliley. Yet the attorney-client confidentiality relationship is by nature an opt-in protection. In short, for attorneys, the very act of disclosing a privacy policy can create a confidentiality violation.

It was not the intent of Congress to regulate attorney-client relations. Our intent was to regulate the growing use and sale of consumers' personal information for marketing, profiling and other commercial purposes by bona fide financial institutions. At the end of the day, our bill will make the intention of the Gramm-Leach-Bliley Act crystal clear. The scope of the law was not intended to include law firms and sole practicing lawyers.

I urge my colleagues to support this legislation.

Mrs. MALONEY of New York. Mr. Speaker, I rise today in support of legislation that I am introducing with my colleague JUDY BIGGERT of Illinois, the Judicial Code of Conduct Privacy Clarification Act. This legislation resolves the continuing controversy as to whether attorneys at law, who are subject to strict codes of professional conduct, should be subject to the privacy section of the Gramm-Leach-Bliley Act. The Biggert-Maloney legislation recognizes that the practice of law and the business of financial services are wholly different and that Gramm-Leach-Bliley should be clarified to recognize this distinction.

Protecting personal privacy should be one of the highest priorities of Congress. Whether online, over the phone or in person, I believe that individuals should be allowed the maximum control over information they supply to financial services and other companies.

With passage of Gramm-Leach-Bliley in 1999, Congress took a small first step in ensuring that consumer privacy is protected as financial institutions continue to merge and as the economy grows increasingly digital. As a member of the then-Banking Committee, I was proud to play a role in requiring that financial services companies supply their customers with privacy policies and allow customers the right to opt-out of information sharing with third-parties. These were groundbreaking provisions that future Congresses should work to expand.

Unfortunately, since enactment, Gramm-Leach-Bliley has caused significant confusion for the legal community. On February 11, 2002, I joined 12 of my bipartisan colleagues on the Financial Services Committee in writing to the Federal Trade Commission (FTC) to ask that it grant attorneys an exemption to the Gramm-Leach-Bliley privacy provisions. As we wrote at the time, ''Attorneys are already bound by a duty of confidentiality, enforceable under the laws of all 50 states, that prevents misuse of client information and provides a higher degree of privacy protection than Gramm-Leach-Bliley.'' After a thorough review, the FTC determined that it does not presently have the authority to grant the exemption we requested.

The privacy protections in Title V of Gramm-Leach-Bliley were a response to specific cases where consumers' private, personal financial information was mined without their consent in an effort to market them products. Where Title V is an appropriate response to such egregious cases, it is inappropriate to apply it to most lawyers whose clients already expect that all their disclosures are confidential, covered by State codes of ethics and attorney-client privilege.

For example, the Legal Aid Society of New York City had to translate its privacy notice into many different languages to serve its ethnically diverse clientele. It also had to devote an inordinate amount of time to dealing with confused clients who couldn't understand why they were getting privacy notices from their lawyers when everything they tell their lawyers is presumed to be confidential. I fear this could have a chilling effect on the willingness of these individuals to share critical information with their attorneys. The confusion these privacy notices are causing in New York is unnecessary given that there is express language forbidding the sharing of client information in the New York State Ethics Code for lawyers.

I join Representative BIGGERT in introducing this legislation today because it is my intention to target this limited area where the interpretation of Gramm-Leach-Bliley can be improved by a legislative fix. The FTC's standing interpretation of Title V of the Act is causing confusion that is determined to the attorney-client relationship. It is appropriate for Congress to intervene. I have met with numerous constituents from New York City on this issue and am convinced that attorneys should not fall under the existing language. I do understand that it is late in the congressional session and I invite interested parties to work with me to improve the legislation in the coming year.

I look forward to continuing to work to safeguard the privacy of my constituents in the coming Congress. I emphatically do not support any rollback of the progress that has been made on privacy. This legislation is limited and strictly targeted. As for the larger privacy issues—the American public deserves more privacy protections, not fewer.

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. FILNER) is recognized for 5 minutes.

(Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

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## IRAQ AND THE WAR ON TERRORISM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. GRUCCI) is recognized for 5 minutes.

Mr. GRUCCI. Mr. Speaker, on September 20, 2001, before a joint session of Congress, President Bush declared, and I quote, our war on terror begins with al Qaeda but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. This principle rallied the world to support the war on terrorism. Today, we must remind ourselves of this principle as America considers action against Iraq. We must remember that the actions of Saddam Hussein are nothing short of terrorism. Until he is removed from a position of power and influence, Americans will not be safe and the war on terrorism will not be won.

On September 16, 2002, Iraq delivered a letter to the United Nations allowing U.N. weapons inspectors unconditional access to Iraq. While the recent letter from Iraq may be received as good news by some, it is important to place this action in the appropriate historical perspective.

A quick reminder of 1998 when Saddam Hussein forced weapons inspectors out of Iraq is enough to understand that the latest move is nothing more than theatrics that will only give Iraq additional time to stockpile and hide weapons of mass destruction to avoid detection.

In May of 1991, Iraq accepted United Nations resolution 687, giving inspectors unconditional access to Iraq. In the years that followed, Iraq contradicted their unconditional pledge to support resolution 687 with the following actions:

June of 1991, Iraqi personnel prevent inspectors from approaching by firing warning shots.

October of 1991, Iraq refuses to accept United Nations resolution 715 calling for additional unconditional access for inspectors.

February of 1992, Iraq refuses to allow the destruction of certain facilities used in weapons programs.

April of 1992, Iraq calls for the end of surveillance flights and threatens the safety of pilots.

June of 1993, Iraq refuses to allow remote controlled monitoring cameras at two missile engine sites.

March of 1996, Iraq refuses access to five inspection sites designated for inspection.

June of 1996, Iraq denies access to sites under investigation.

June of 1996, Iraq denies access to another inspection team.

November of 1996, Iraq refuses to allow inspectors to remove missile remnants for analysis.

June of 1997, Iraqi personnel attempt to physically prevent a helicopter pilot from flying to inspection areas.

June of 1997, Iraq denies access to inspection sites.

September of 1997, an Iraqi officer attacks inspectors photographing unauthorized movements of Iraqi vehicles.

August of 1998, Iraq announces that they will refuse to agree to any United Nations resolutions until the oil embargo is lifted.

In fact, Iraq has violated 16 United Nations resolutions and sanctions. Sadly, I believe that future inspections will once again be met with blatant defiance and further problems.

Removing Saddam's weapons of mass destruction will only occur when we remove Saddam Hussein. Just in the last several days, Iraq stated that it will not accept any new United Nations resolutions. Furthermore, Iraqi officials have already started adding conditions to their allowance of unconditional access.

We must not allow ourselves to be led down that same path of noncooperation that Iraq has led the world down in the past. We do not need to look beyond Iraqi defectors, many from within Saddam's nuclear program, to learn that Saddam Hussein is dangerously close to obtaining nuclear weapons and has advanced considerably in his biological and chemical weapons programs. I do not believe that we should have to wait for another United States city to be devastated, a military base to be targeted or even to be attacked in order to respond to the threat of Saddam Hussein. Every minute we delay only brings this enormous threat closer to reality.

Mr. Speaker, I applaud the President's actions to come to the Congress and seek the Congress's approval. As freedom-loving nations continue to eliminate international terrorism, this war will not end until every terrorist group of global reach has been found, stopped and defeated.

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. KUCINICH) is recognized for 5 minutes.

(Mr. KUCINICH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

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## PAUL ESPINOSA RESOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Mrs. DAVIS) is recognized for 5 minutes.

Mrs. DAVIS of California. Mr. Speaker, I rise today in strong support of my resolution recognizing the contributions of my constituent from San Diego, Paul Espinosa, to both the Latino and the arts community. A few years ago, a study conducted by a leading Latino nonprofit concluded that representation of Hispanics in mainstream network television decreased during the last 30 years. The few roles that were held by Latinos often depicted them as criminals, maids or gardeners. Paul Espinosa observed this disturbing trend 20 years ago and dedicated himself to making documentaries and films about Hispanic Americans. He applied his academic background in anthropology to media and developed textured depictions of Hispanics.

The results have made Paul Espinosa one of the country's most respected and recognized documentary filmmakers. His works, to name a few, include the Lemon Grove Incident, the Hunt for Pancho Villa, and the Earth did not swallow him, Uneasy Neighbors, and The Border. The characters and experiences in his films are as diverse as the Latino community itself. He chronicled the story of a controversial 19th century New Mexico priest, the defining summer in a young migrant boy's life, and the actions of parents in Lemon Grove, California fighting for their children's education. Through these films, Paul Espinosa shows that Latinos possess a complex and dignified history. These previously untold stories examine the social issues surrounding the protagonists and provide a history lesson for all their viewers.

Many consider Paul Espinosa's films catalysts for important cultural dialogue. These films are so highly regarded that they have become the basis for film festivals bearing his name in Texas and California. Academia has also recognized Paul Espinosa's films for their contributions to education. Various high schools and universities include some of his films in their curriculum. Paul Espinosa, who holds a B.A. from Brown University and a Ph.D. from Stanford University, was named a Regents Lecturer at the University of California San Diego in 2000 and is frequently asked to lecture at numerous universities on his films.

Besides his work as a filmmaker, Paul Espinosa is a media arts activist. He is strongly dedicated to enabling an upcoming generation of filmmakers. His involvement with the Media Arts Center of San Diego and the Association of Independent Video and Filmmakers speaks to his commitment to support aspiring media artists and increase the visibility of traditionally underrepresented groups.

One of the Media Art Center's most promising initiatives is the Teen Producer's Project. It teaches young people artistic and analytical skills by emphasizing effective communication through the use of digital video, interpersonal skills and creative writing.

Paul Espinosa has defined his career by making films that tell a meaningful story. His films have spurred discussion and challenged its viewers to reexamine their perceptions of Hispanic Americans.

I hope you, Mr. Speaker, and all of my colleagues will join me in honoring this community artist, his accomplishments in the media arts and his triumphs for the Latino community.

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## MAKING AMERICA INDEPENDENT OF MIDDLE EASTERN OIL

The SPEAKER pro tempore (Mr. PUTNAM). Under a previous order of the House, the gentleman from Massachusetts (Mr. TIERNEY) is recognized for 5 minutes.

Mr. TIERNEY. Mr. Speaker, there has been much debate on how the United States should proceed with Iraq. I rise to draw attention to an issue that is critical to this decision-making process.

As we debate how and whether to take military action in Iraq, I should hope that we could all agree to take economic action against Saddam Hussein. Now, it is clear that the United States is overly dependent on foreign oil. The United States presently imports 48 percent of the 19.7 million barrels of oil it consumes each day. Of that total, approximately half a million barrels come from Iraq.

Now is the opportunity to pursue a policy of making America independent of Middle Eastern oil. To do this, we have to aggressively pursue new technologies and development of renewable energy, biomass, geothermal, hydropower, solar and wind. A renewed effort toward policies that encourage reduced reliance on fossil fuels and more secure sources of dependable energy would mean the creation of jobs that would strengthen our economy and better serve our national interests.

Now is the precise moment for the United States to shed its dependency on any Iraqi oil and work toward a future when our domestic energy policy plays a role in how we implement strategic initiatives.

Already we are told that Saddam Hussein does not use the proceeds from the sale of oil to feed his population or to provide medical needs for his people. We are told instead that the profits

from these sales are going to his own personal needs, to his aggrandizement with palaces and other monuments that he builds to himself, and to embellishing his Republican Guard. Especially if that is the case, then we ought to be talking about not buying Iraqi oil so that he has the proceeds with which to act in that manner, and we ought to be talking about convincing our allies in the international community to do the same.

This will not be easy, but the fact of the matter is we have a capable State Department and a capable Secretary of State who ought to go about the hard work of working diplomatically to convince our international community that that is one way to enforce inspections and enforce disarmament, one tool to use to get the attention of Saddam Hussein, knowing there is a hammer at the other end that can be effective, and we ought to do it.

In the long range, we ought to make sure that we have an energy policy in place that allows us not only to back off of any use of Iraqi oil, but to eventually overcome any need to rely on Middle Eastern oil. It is a relatively small portion of the fossil fuel that we use in this country; and over a period of a reasonable number of years, a concerted and wise energy policy will allow us to strategically pull out of that area and resolve many of the crises we may have in the future dealing with Middle Eastern problems and situations, politically and otherwise.

Mr. Speaker, I think that this is a policy that would be wise. I think we have international resolutions for inspections and disarmament that need international enforcement. We ought to call upon the United Nations to do everything in its power to work within the international community to make sure that they in fact enforce those resolutions and have inspections and make sure that we have disarmament in Iraq.

But that is hard work, as I said before; and it is not as easy sometimes as taking an overpowering military force and attacking. But there is no imminency to any attack on the interests of the United States at this time, and we have an international body and we have an international means to act; and we have the time to do that and try that. We should exhaust all avenues before going to the extreme avenue of an unprovoked, in the sense of any action against the United States directly, action. We should make sure that we use our resources, work within the international community, understand that we can embargo oil to Iraq as an opening step, and get our allies to do the same as a way of enforcing provisions for inspections and disarmament. We ought to move in that direction.

Mr. Speaker, I hope that we can get some agreement on this, and I hope that we can work within the international community to do just that.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Guam (Mr. UNDERWOOD) is recognized for 5 minutes.

(Mr. UNDERWOOD addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## OPTIONS WITH REGARD TO IRAQ

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, the rush to war continues here in Washington, despite the possibility of the reinstatement of effective, unfettered inspections aimed at the destruction of weapons of mass destruction that Saddam Hussein may have hidden from past inspections or may have developed since that time.

Now, Prime Minister Tony Blair, as a surrogate for this administration, did provide a more concrete and detailed report than anything provided by the Bush administration to the United States Congress thus far on what is going on in Iraq. But the interesting thing is, in reading through the 50-some odd pages of this report and perusing the photographs, the actual conclusion is that inspections did work, U.N. sanctions did work, and are still working. The containment and deterrence doctrine has worked with Saddam Hussein.

In fact, the previous program before the inspectors left was extraordinarily successful, more so than would be admitted by this administration, that is very dismissive about the possibility of going back in with intrusive, unfettered inspections with a mandate to destroy any weapons of mass destruction that this miscreant may have managed to develop.

I will read a few quotes from Prime Minister Blair's report. He talks about their attempts to obtain nuclear weapons: ''In August 1990, Iraq instigated a crash program to develop a single nuclear weapon within a year. By the time of the Gulf War, the crash program had made little progress.''

They go on to say that ''UNSCOM had totally dismantled the physical infrastructure of the Iraqi nuclear weapons program, including the dedicated facilities and equipment for uranium separation and enrichment, and for weapon development and production, and removed the remaining highly enriched uranium.''

It is hard to reconcile that with the assertions that intrusive inspections under the auspices of the U.N. will have no impact on Saddam Hussein or his attempts to obtain weapons of mass destruction.

In early 2002, the British intelligence judged that while sanctions remained effective, Iraq will not be able to produce nuclear weapons. That is on page 27 of the justification given by the Prime Minister of Britain for a preemptive war against Iraq. He cannot build or obtain nuclear weapons, according to British intelligence, as long as the sanctions remain in effect, and that is without intrusive inspections backed by the full force of the United States and around the world.

There are many other passages. This is incredibly instructive reading. I would recommend it to my colleagues in Congress. It is certainly more detailed than anything provided to this Congress, either in classified briefings or outside of classified briefings, and certainly more detailed than anything provided to the American public, NATO or anybody else by the United States, and the British have done us a service.

But the case they make is the opposite of the conclusion of their Prime Minister. The case that is strongly made here is that a return to the regime of an intrusive, unfettered weapons inspection and destruction program would effectively preclude this dictator from ever obtaining weapons with which he could threaten other countries in that region, and most certainly the United States of America.

So this, to me, certainly demonstrates that the rush to war, the first preemptive war in the history of the United States, the first preemptive war since the horrible destruction of World War II and the U.N. and the agreements we have reached since then, breaking with all precedent, the United States, in some bizarre version of ''Minority Report,'' the movie, will decide that we have people in the administration who can determine whether or not someone presents a real and present threat to the United States, even if they made no threats, even if there is no documentation of them having the capabilities on carrying out on the threats they have not made; and we, the United States of America, should be able, in violation of all international law and all precedents of our Nation, be able to preemptively attack and destroy that country for the purposes of regime change, because we do not like who is running that country.

Well, there are a lot of brutal dictators around the world running a lot of countries I do not like, including Saddam Hussein; and I would support democratic efforts and subversion efforts and any other way to get those people out of power. But a war that opens the door to worldwide conflicts, to Taiwan and China, India and Pakistan and any other host of countries, is an incredibly dangerous precedent, and this report from the Prime Minister to his Parliament documents that it is not necessary. We have an effective option before us.

## ENERGY AND THE POTENTIAL FOR WAR IN THE MIDDLE EAST

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, the gentleman from Oregon (Mr. BLUMENAUER) is recognized for 60 minutes as the designee of the minority leader.

Mr. BLUMENAUER. Mr. Speaker, I rise to address the House this evening, as we have had speakers here earlier, focusing on issues of energy and the potential for war in the Middle East.

I think it is appropriate that these two issues are in fact before us, because oil and the Middle East are linked in the minds of the public; and, in fact, I think any credible observer would agree that in fact they are linked in fact.

Tonight, as one reflects on the status of the potential growing cloud of war in the Middle East as we are dealing in this country with issues that relate as we speak now, there is a conference that has been meeting in terms of the energy policy. I think it is appropriate for us to step back and reflect on the status of what this Congress has done in the course of the last year to deal meaningfully with energy policy.

It is something that in and of itself is important for us to focus on, but it would seem that in the aftermath of the horrible attacks of September 11 of last year, the rising tensions in the Middle East, the pressures that took place as we moved into Afghanistan, what we have seen in terms of the potential problems with oil that is concentrated in terms of the 50 percent or more that comes to the United States from foreign sources, that there would be a sense of urgency about that discussion.

Americans want and deserve a national energy policy that ensures safe, affordable and clean energy. One must only be disappointed by the lack of leadership and urgency that we have seen with the administration, and, sad to say, here in Congress, to reduce our dependence on foreign oil, to say nothing about reducing the impact of the pollution that is associated with that dependence.

We have now been working on an energy bill for almost 2 years; and the plan that has come forward from the House does not even employ simple steps to reduce the demand for oil that years of study have demonstrated beyond question are necessary and in fact will work.

Sadly, this is in the midst of the economic challenges that we face as we have seen the promise of fiscal stability go out the window. In my State of Oregon we have consistently in the course of over the last year and a half had among the highest unemployment rates in the country.

It was less than a year and a half ago when we heard from the President that we could in fact embark upon a massive tax cut because we were going to have over $5 trillion in surplus; and, in fact, it was alleged that one of the real problems we were facing as a Nation was the possibility that we would be paying off the national debt so rapidly that we would not have safe investment instruments.

Well, we have dodged that bullet. We have not just a tight budget, but we have deficits now for as long as the eye can see. We are going to be borrowing between 100 billion and $200 billion of Social Security trust funds. One only hears faintly the echo of the lockbox that people were going to set aside these monies, and we are looking at a significant long-term structural deficit.

□ 2045

But in the context of that, we have the conferees looking at an energy bill that would give away billions of dollars in new subsidies and tax breaks for fossil fuel, for the automobile industry, for the nuclear industry while sadly shortchanging clean, sustainable energy sources.

Having a dependable supply of energy and using it wisely is critical for Americans to be able to have livable communities. However, in response to the terrorist attacks and the call for more stable and predictable energy supply, we should not increase our dependence on fossil fuels in the way that we have for a century. The question is not whether we should reduce our dependence on oil, but whether we have the will; not whether we will reduce dependence on fossil fuel, but how and when we are going to achieve it. What is our strategy?

With the United States holding some 3 percent of the world's oil reserves, yet consuming over 25 percent of the fossil fuels, we will never drill our way out of reliance on the unsustainable sources of oil. But aside for a moment that the vast majority of the oil that we rely upon is concentrated in a handful of countries in an area that has never been particularly stable, but has been growing increasingly unstable over time, much of the recoverable oil in the United States, the 2 or 3 percent, is environmentally and politically difficult to access.

Now, many of my friends on the other side of the aisle in the Republican Party and, of course, the White House believe that drilling for oil in the Arctic Wildlife refuge is an important part of the solution. Well, the fact is that even if we were to disregard the serious questions and problems associated with it, the reserves that we can recover in the Arctic are likely to provide only a few months energy supply for the United States, some have suggested 6 months or less, and it is not going to be available to us for the better part of a decade.

If we, in fact, are concerned about energy security, if we are concerned about potential terrorist threats, putting our reliance on the 800-mile Alaskan pipeline seems to be a rather slender thread to rely upon. Recall that it was just a year ago when we had a drunk with a hunting rifle shoot up the pipeline, spilling almost 300,000 gallons of oil before the problem could be solved, and that was in the early fall.

Consider what would have happened if this drunk had assaulted the pipeline later in the year, in the winter. Interrupting the flow of oil would have caused the entire pipeline to be subject to freezing up, and we would have an 800 mile long piece of Chapstick, hardly a safe and secure method of assuring oil supply to the lower 48 States. If a drunk with a hunting rifle can disrupt the flow, think what would happen along 800 miles if a few determined terrorists decided to inflict damage on it. Not something that we are going to rely upon.

The notion that this is, in fact, part of a comprehensive energy solution that is going to be an important part of solving our problem is, at best, disingenuous for the American public as it is damaging to the environment. The public has made clear its opposition to drilling in the Arctic Wildlife Refuge.

Now, where would the administration take us next? According to the petroleum industry, western Federal lands hold 95 percent of untapped United States oil and 40 percent of untapped natural gas. In the last year, 2001, the administration approved 3,800 permits for companies to drill for oil and gas, the most in one year since 1988. Reflecting for a moment that it has taken eons for the radiant energy from the sun to convert by natural process to fossil fuels, in the course of a few generations we will have used up nearly all of the Earth's entire supply of accessible petroleum.

The question is increasingly not just how much oil is left in the ground, but how long can we go on increasing the rate at which cheap oil is extracted. I think it is clear that there is a finite duration; it is just a matter of time when that curve is crossed and when the cheap oil is reduced, starts to go away that we change the economics of the petroleum industry. One hopes that we can convince our friends in the administration and our colleagues on the other side of the aisle to join the American public in realizing that we do have the technology to meet more of our energy needs through alternatives. Through energy conservation we have not, by any stretch of the imagination, exhausted the potential of energy savings through conservation, through increased full efficiency. Remember that a 3-mile per gallon increase in fuel efficiency for SUVs would offset the entire amount of oil that we expect to extract some day from the Arctic Wildlife Refuge, if we change our policy.

It is an opportunity for us to think about new creative ways to accelerate that progress. In one hour, there is more energy that the Earth receives from the sun, through the solar process, than is the entire year's output in fossil fuels. Energy and fuel efficiency is the quickest, cheapest, cleanest way to save not just energy. Most people will recover in a relatively short period of time over the course of the life of a vehicle the savings for any increase in the price of that vehicle. If they are going to have to have a more expensive SUV, if the people are not going to cut down on the power at all, they will end up in being able to recover those costs

through savings that they will achieve in terms of reduced expenditure that they have. Passenger cars, for example, use more than 40 percent of the oil consumed in America. The average American driver spends 443 hours driving every single year. In fact, America's cars, light trucks, consume one-tenth of the annual global oil production.

Mr. Speaker, we have resources available to us to, in fact, make a difference in energy efficiency, and it is something that we want to focus on with this Congress, not allow this time to get away from us, use the opportunity of the energy conference bill and each opportunity that comes before us from now until we adjourn to be able to advance the cause of America's energy security.

I note, Mr. Speaker, that I have been joined by the gentlewoman from southern California (Ms. SANCHEZ), my colleague, with whom I have been pleased to work on a variety of issues that speak to the environment, to transportation. She has a wide variety of interests that range from the environment to national security. I am honored that she would join us this evening. I yield to the gentlewoman should she have some comments that she would wish to share.

Ms. SANCHEZ. Mr. Speaker, I thank the gentleman from Oregon, and I thank him for coming down to the House floor tonight to speak about such an important issue. With everything going on right now, with our Nation assessing whether to go to war in the Middle East and the state of our economy being so shaky, we in Congress need to make sure that we are asking the right questions.

For instance, we are here tonight to talk about how are we going to achieve a realistic solution to U.S. foreign oil dependence?

Now, it is not like this is a new question. I remember back in 1973, 1974, I am a Californian. We use a lot of oil, we drive a lot of cars, we go a lot of places, we drive long distances. I remember standing in lines and waiting in 100-car lines the last time we had a problem with OPEC and prices going up, and we all swore that we would do something about this and that we should not be so dependent on cars that use so much gas. For a while we remembered that and we started to work on and import and get more gas mileage for our cars. But then what happened? The SUV situation, and now we find that we are back up to those gas guzzlers, once again.

So we have to say to ourselves, this is an opportune time when we can make some real policy decisions and put into play some very important solutions, possible solutions. People ask me all the time, well, what answer do you have, LORETTA, to importing oil from Iraq or from the Middle East or the OPEC countries? There are a lot of ways, and it does not just have to be that we have to go off to the Arctic circle and drill the last plain that we have that is not touched by humans. There are other ways to do this.

Let me give my colleagues an example. I am from southern California. We had an energy crisis about a couple of summers ago, about 18 months ago, blackouts in our production, our factories were being affected because we were not getting the electricity we needed; we had natural gas prices go high on us. Now, we now know that much of that was artificially created. But for the moment, while we were in the middle of all of that, we were asking ourselves, how are we going to solve this problem?

Well, the first thing is consumption. Why is it that we consume the way we do? And we offered incentives at the State level. As it is, I come from a large family. My dad always taught us to turn off the lights as we left the room and turn everything off, so I grew up that way, so our energy bill was low. But the Governor told us, if you conserve 20 percent more than what you normally use, you will get an incredible savings on your electricity bill. Let me tell my colleague, people rose to the occasion in California. We saw an incredible drop in the consumption of electricity. We learned that once again, things that we know, but we do not think about, that we should run our machines, our washers and dryers and dishwashers and stuff at night, rather than during the day when the regular business shift is using that power.

□ 2100

So that we do not have to create more power plants, nor nuclear power plants, divert more rivers, create more energy. We can actually use what we already have, as long as we use it efficiently.

California proved that we could do it. It was not a hardship. We were not killing ourselves to get that done. We understood that it was the right thing to do for the moment, and we could continue, and many people have. Many people have learned to live with less, if you will. We can do that in so many ways.

Why is it that every time that we set standards at the Federal level to require automobiles to get higher gas mileage, and we say it is going to be 7 years off, the companies need to work towards this, why is it that we reach the 7 years, and all of a sudden we need to change the law because nobody invested in that, nobody really did it? We could have done it. If they knew we were going to stick to our guns, they would do that; they would increase the efficiency of our automobiles.

Or we could just remember to put all our shopping trips in one haul. There are so many things that we could do; for instance, offering incentives. Do not punish people, but offer people, companies, incentives for new technologies, to invest more in new technologies for wind and solar and fuel cells. I will bet if we did that and we were real about it, if we put the money behind that, that we would find companies that would be willing to step up and use that and do it and find the solutions so that we would not be so dependent on foreign oil supplies, or even on the need to drill our own supplies that we know exist in some of the States that we have.

We have to build better vehicles. We have to light and heat our buildings more efficiently. I know that by doing that we could lower our dependence on fossil fuel oil, which is the real problem that exists here.

We have said for years that we are going to do it, but we have never stood behind that. We have never, as a Federal Government, as a policy of the people, said: be more efficient. Let us strengthen energy efficiency standards. Let us create incentives for a new generation of vehicles. Let us raise the fuel economy standards; and let us adopt a strong, renewable portfolio standard. If we do this, we will not be dependent on the Iraqs of the world.

I thank my colleague for bringing this to light. We need to discuss this more. We need to get the American people involved in deciding that they are part of the solution towards this dependence that we have on foreign countries because of the oil that they possess.

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentlewoman's comments and her leadership.

I will always remember the visit we took last year with some of our colleagues to the Arctic National Wildlife Refuge, where we were camping on a plain amidst the caribou; where we had a chance to really sense the vastness of that area, to get a feel for what was at stake as we looked at other areas that had been developed and were continuing to be developed for oil production.

It was clear that this was one of America's jewels, and I have appreciated the gentlewoman's commitment in terms of going up there to see it firsthand and the gentlewoman's continued advocacy for a more rational and thoughtful energy policy.

Hopefully, working together, we can advance these causes here in Congress that will make a difference for America's energy security.

Ms. SANCHEZ. Mr. Speaker, I thank the gentleman. I just want to add, it is very important that we save that last frontier. I would like my nieces and nephews to be able to see a part of the North American continent that is the same as it was 100, 200, 600, 1,000 years ago. They deserve a chance to see a plain that is open, that is in its austere and pristine condition. That is a legacy that I think is important for us to protect, especially when we can do it through better efficiency and tightening down and understanding that we are part of our own problem.

Mr. BLUMENAUER. Mr. Speaker, I think the gentlewoman said it well, and I thank her for her participation.

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BACHUS (at the request of Mr. ARMEY) for noon today and the balance of the week on account of family reasons.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. EDDIE BERNICE JOHNSON of Texas) to revise and extend their remarks and include extraneous material:)

Ms. NORTON, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. HINOJOSA, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. KUCINICH, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mrs. DAVIS of California, for 5 minutes, today.

Mr. TIERNEY, for 5 minutes, today.

Mr. UNDERWOOD, for 5 minutes, today.

(The following Members (at the request of Mrs. BIGGERT) to revise and extend their remarks and include extraneous material:)

Mr. WELDON of Pennsylvania, for 5 minutes, today.

Mr. PETERSON of Pennsylvania, for 5 minutes, today.

Mrs. BIGGERT, for 5 minutes, today.

Mr. GRUCCI, for 5 minutes, today.

## ADJOURNMENT

Mr. BLUMENAUER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 5 minutes p.m.), the House adjourned until Thursday, September 26, 2002, at 10 a.m.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

9346. A letter from the Under Secretary, Department of Defense, transmitting the Department's report on the Family Subsistence Supplemental Allowance program, pursuant to Public Law 105—85 section 655(a)(2) (111 Stat. 1805); to the Committee on Armed Services.

9347. A letter from the Under Secretary, Department of Defense, transmitting the Department's report entitled, ''Report on Nuclear-Powered Submarine Force Structure,'' pursuant to Public Law 106—398; to the Committee on Armed Services.

9348. A letter from the Attorney-Advisor, Department of Transportation, transmitting the Department's final rule — Amendment of MARAD's Regulations Establishing and Administering Deposit Funds Authorized by Section 1109 of the Merchant Marine Act, 1936, as Amended [Docket No. MARAD-2002-12425] (RIN: 2133-AB47) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

9349. A letter from the Secretary, Department of Education, transmitting the Department's report on Presidential Advisory Committee Recommendations; to the Committee on Education and the Workforce.

9350. A letter from the Trial Attorney, Department of Transportation, transmitting the Department's final rule — List of Nonconforming Vehicles Decided to be Eligible for Importation [Docket No. NHTSA-2002] (RIN: 2127-AI79) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9351. A letter from the Investment Manager, Treasury Division, Army and Air Force Exchange Service, transmitting a report on the Annual Federal Pension Plans, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Reform.

9352. A letter from the Secretary, Department of Transportation, transmitting the Secretary's Management Report on Management Decisions and Final Actions on Office of Inspector General Audit Recommendations for the period ending March 31, 2002, pursuant to 31 U.S.C. 9106; to the Committee on Government Reform.

9353. A letter from the Deputy General Counsel, National Science Foundation, transmitting the Foundation's final rule — Antarctic Conservation Act of 1978, Civil Monetary Penalties — received September 23, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

9354. A letter from the Acting Assistant Secretary of the Army, Department of Defense, transmitting a report in compliance with the Water Resources Development Act of 2000; to the Committee on Transportation and Infrastructure.

9355. A letter from the Acting Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Safety Zone; Crazy Horse Campground, Colorado River, Lake Havasu, AZ [COTP San Diego 02-021] (RIN: 2115-AA97) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9356. A letter from the Acting Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Liferaft Servicing Intervals [USCG-2001-11118] (RIN: 2115-AG28) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9357. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; CFM International CFM56 Series Turbofan Engines [Docket No. 95-ANE-64-AD; Amendment 39-12876; AD 97-09-02R1] (RIN: 2121-AA64) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9358. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Eurocopter France Model AS332C, L, L1, and Model SA330F, G, and J Helicopters [Docket No. 2001-SW-47-AD; Amendment 39-12880; AD 2002-18-06] (RIN: 2120-AA64) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9359. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace, Coppertown, MT [Airspace Docket No. 01-ANM-08] received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9360. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Amendment to Using Agency for Restricted Area 2534 A & B, Vandenberg Air Force Base, CA [Docket No. FAA-2002-12302; Airspace Docket No. 02-AWP-05] (RIN: 2120-AA66) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9361. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class D Airspace; Stillwater Municipal Airport, Stillwater, OK [Airspace Docket No. 2001-ASW-18] received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9362. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Scott Field Airport, Mangum, OK [Airspace Docket No. 2002-ASW-1] received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9363. A letter from the Administrator, Small Business Administration, transmitting the Annual Report on Minority Small Business and Capital Ownership Development for Fiscal Year 2001, pursuant to 15 U.S.C. 636(j)(16)(B); to the Committee on Small Business.

9364. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — New Markets Tax Credit [Notice 2002-64] received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

9365. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Obligations of States and Political Subdivisions [TD 9016] (RIN: 1545-AY71) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

9366. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability (Rev Proc 2002-61) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

9367. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev Rul 2002-61) received September 20, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under Clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SENSENBRENNER: Committee on Conference. Conference report on H.R. 2215. A bill to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes (Rept. 107–685). Ordered to be printed.

Mr. BURTON: Committee on Government Reform. H.R. 3340. A bill to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift savings Plan to be made by participants age 50 or over (Rept. 107–686). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. S. 487. An act to amend chapter 1 of title 17, United States Code, relating to

the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes (Rept. 107–687). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 1811. A bill to provide permanent funding for the payment in lieu of taxes program, and for other purposes (Rept. 107–688). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 2408. A bill to provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands (Rept. 107–689). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 3747. A bill to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System (Rept. 107–690). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 3896. A bill to repeal the reservation of mineral rights made by the United States when certain lands in Livingston Parish, Louisiana, were conveyed by Public Law 102–562 (Rept. 107–691). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 4853. A bill to provide that land which is owned by the Seminole Tribe of Florida but which is not held in trust by the United States for the Tribe may be mortgaged, leased, or transferred by the Tribe without further approval by the United States; with amendments (Rept. 107–692). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 4600. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; with an amendment (Rept. 107–693, Pt. 1). Referred to the Committee of the Whole House on the State of the Union.

Mr. TAUZIN: Committee on Energy and Commerce. H.R. 4600. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; with an amendment (Rept. 107–693, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 550. Resolution providing for consideration of the joint resolution (H.J. Res. 111) making continuing appropriations for the fiscal year 2003, and for other purposes (Rept. 107–694). Referred to the House Calendar.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 551. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 107–695). Referred to the House Calendar.

Ms. PRYCE of Ohio: Committee on Rules. House Resolution 552. Resolution waiving points or order against the conference report to accompany the bill (H.R. 2215) to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes (Rept. 107–696). Referred to the House Calendar.

Mr. REYNOLDS: Committee on Rules. House Resolution 553. Resolution providing for consideration of the bill (H.R. 4600) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery room (Rept. 107–697). Referred to the House Calendar.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. EVANS (for himself, Mr. FILNER, Mr. GUTIERREZ, Ms. BROWN of Florida, Ms. CARSON of Indiana, and Mr. RODRIGUEZ):

H.R. 5454. A bill to amend title 38, United States Code, to provide for the annual placement of memorials honoring the service in the Armed Forces of veterans who, at the time of death, were homeless or indigent; to the Committee on Veterans' Affairs.

By Mr. YOUNG of Alaska:

H.R. 5455. A bill to amend title 23, United States Code, relating to streamlining for highway and transit projects, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. UPTON:

H.R. 5456. A bill to direct the Secretary of Transportation to maintain flight restrictions over major sporting events and other major open assemblies of people; to the Committee on Transportation and Infrastructure.

By Mrs. BIGGERT (for herself, Mrs. MALONEY of New York, Mr. GILLMOR, Mr. WATT of North Carolina, Mr. SHAYS, Mrs. JONES of Ohio, Mr. MANZULLO, Mr. MASCARA, and Mr. FRANK):

H.R. 5457. A bill to amend the Gramm-Leach-Bliley Act to exempt attorneys from the privacy provisions of that Act; to the Committee on Financial Services.

By Mr. BILIRAKIS (for himself, Mr. BROWN of Ohio, Mr. YOUNG of Florida, Mr. LANGEVIN, Mr. HOUGHTON, and Mr. HOYER):

H.R. 5458. A bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities, and for other purposes; to the Committee on Energy and Commerce.

By Mr. BONIOR:

H.R. 5459. A bill to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community; to the Committee on Resources.

By Mr. CALVERT:

H.R. 5460. A bill to reauthorize and amend the Federal Water Project Recreation Act, and for other purposes; to the Committee on Resources.

By Mr. KINGSTON (for himself, Mr. LARSON of Connecticut, Mr. TOM DAVIS of Virginia, and Mr. LEWIS of Kentucky):

H.R. 5461. A bill to enhance homeland security by encouraging the development of regional comprehensive emergency preparedness and coordination plans; to the Committee on Transportation and Infrastructure.

By Mr. NETHERCUTT (for himself, Ms. DEGETTE, Mr. WELDON of Pennsylvania, and Mr. LAFALCE):

H.R. 5462. A bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy; to the Committee on Energy and Commerce.

By Mr. PETRI:

H.R. 5463. A bill to amend the Internal Revenue Code of 1986 to allow a dividends paid deduction; to the Committee on Ways and Means.

By Mr. PLATTS:

H.R. 5464. A bill to amend section 4531(c) of the Balanced Budget Act of 1997 to permit payment for ALS intercept services furnished in areas other than rural areas and other than through a volunteer ambulance service; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. POMBO (for himself, Ms. ESHOO, Mr. SHERMAN, Mr. DOOLEY of California, Mr. COX, Mr. ROHRABACHER, Mr. ISSA, Mr. DREIER, Ms. WATSON, Mr. OSE, Mr. HUNTER, Mr. ROYCE, Mrs. TAUSCHER, Mr. CONDIT, Mr. GARY G. MILLER of California, Mr. RADANOVICH, Mr. WAXMAN, Mr. BERMAN, Mr. MCKEON, Ms. HARMAN, Mr. LEWIS of California, Mr. DOOLITTLE, Mr. CALVERT, Ms. SANCHEZ, Ms. ROYBAL-ALLARD, Ms. WOOLSEY, Mrs. BONO, Mr. CUNNINGHAM, Mr. MATSUI, Mr. FARR of California, Mr. HORN, Mr. LANTOS, Mr. HERGER, and Mr. BECERRA):

H.R. 5465. A bill to designate the facility of the United States Postal Service located at 3131 Arch Airport Road in Stockton, California, as the ''Norman Shumway Post Office Building''; to the Committee on Government Reform.

By Mr. REYNOLDS (for himself and Mr. DOOLITTLE):

H.R. 5466. A bill to amend the Internal Revenue Code of 1986 to simplify and reduce the capital gain rates for all taxpayers and to exclude from gross income 55 percent of the dividends received by individuals, and for other purposes; to the Committee on Ways and Means.

By Mr. SMITH of Michigan:

H.R. 5467. A bill to reauthorize the program of block grants to States for temporary assistance for needy families for 2 years; to the Committee on Ways and Means.

By Mr. TAYLOR of North Carolina (for himself, Mr. JONES of North Carolina, Mr. KILDEE, and Mr. CARSON of Oklahoma):

H.R. 5468. A bill to provide for a Federal land exchange for the environmental, educational, and cultural benefit of the American public and the Eastern Band of Cherokee Indians, and for other purposes; to the Committee on Resources.

By Mr. YOUNG of Florida:

H.J. Res. 111. A joint resolution making continuing appropriations for the fiscal year 2003, and for other purposes; to the Committee on Appropriations, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HYDE (for himself and Mr. LANTOS):

H. Con. Res. 483. Concurrent resolution directing the Clerk of the House of Representatives to make techinical corrections in the enrollment of the bill H.R. 1646; considered and agreed to.

By Mr. CASTLE (for himself and Mr. LAMPSON):

H. Con. Res. 484. Concurrent resolution expressing the sense of the Congress regarding

personal safety for children, and for other purposes; to the Committee on Education and the Workforce.

By Mr. JONES of North Carolina:

H. Con. Res. 485. Concurrent resolution requesting the United States Government to take appropriate action to urge the Government of the People's Republic of China to provide for a fair resolution of the claims of United States citizens who hold Chinese Government bonds on which that Government has defaulted; to the Committee on International Relations.

By Mr. PLATTS (for himself and Mr. MCNULTY):

H. Con. Res. 486. Concurrent resolution expressing the sense of the Congress that there should be established a Pancreatic Cancer Awareness Month; to the Committee on Government Reform.

By Mr. RANGEL (for himself and Mr. GILMAN):

H. Con. Res. 487. Concurrent resolution authorizing the printing as a House document of a volume consisting of the transcripts of the ceremonial meeting of the House of Representatives and Senate in New York City on September 6, 2002, and a collection of statements by Members of the House of Representatives and Senate from the Congressional Record on the terrorist attacks of September 11, 2001; to the Committee on House Administration.

By Mrs. DAVIS of California:

H. Res. 554. A resolution honoring Paul Espinosa for an exceptional career in film and for contributing to a greater appreciation of Hispanic-Americans both past and present; to the Committee on Government Reform.

By Mr. GALLEGLY:

H. Res. 555. A resolution recognizing the continued importance of the trans-Atlantic relationship, promoting stronger relations with Europe by reaffirming the need for a continued and meaningful dialogue between the United States and Europe, and congratulating the Honorable Benjamin A. Gilman for his efforts to promote a strong trans-Atlantic dialogue; to the Committee on International Relations.

By Mr. PALLONE (for himself, Mr. LAMPSON, Ms. BROWN of Florida, Mr. FOLEY, Mr. FROST, Ms. KAPTUR, Mr. LEVIN, Ms. MILLENDER-MCDONALD, Mrs. MINK of Hawaii, Ms. ROYBAL-ALLARD, Mr. SCHIFF, Mr. WEXLER, Mr. WILSON of South Carolina, Mr. ROTHMAN, Ms. SCHAKOWSKY, Mr. TERRY, Mr. PAYNE, and Mr. ACEVEDO-VILA):

H. Res. 556. A resolution I53Recognizing the ''Code Adam'' child safety program, commending retail business establishments that have implemented programs to protect children from abduction, and urging retail business establishments that have not implemented such program to consider doing so; to the Committee on Energy and Commerce.

By Mr. SHOWS:

H. Res. 557. A resolution expressing support for United States forestry, lumber, wood, paper, and allied product industries and encouraging protection of these industries against the unfair trade practices of the People's Republic of China; to the Committee on Ways and Means.

By Mr. SNYDER (for himself and Mr. BEREUTER):

H. Res. 558. A resolution congratulating the Russian Federation and the citizens of Volgograd on the 60th anniversary of the Russian victory at Stalingrad; to the Committee on International Relations.

## ADDITIONAL SPONSORS

Under clause 7 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 122: Mr. POMBO.
H.R. 440: Mr. LOBIONDO.
H.R. 536: Mr. BISHOP.
H.R. 826: Ms. ROS-LEHTINEN and Mr. MCNULTY.
H.R. 896: Mr. ANDREWS.
H.R. 1186: Mr. PAUL.
H.R. 1232: Mr. LARSEN of Washington.
H.R. 1296: Mr. KELLER.
H.R. 1331: Mr. LATHAM.
H.R. 1353: Ms. MCCOLLUM.
H.R. 1368: Mr. CANNON.
H.R. 1433: Mr. SMITH of Washington.
H.R. 1555: Mr. MCNULTY.
H.R. 1808: Ms. SOLIS.
H.R. 1841: Ms. BALDWIN, Ms. VELAZQUEZ, Mrs. CHRISTENSEN, Mr. ACKERMAN, Mr. MATSUI, Mr. SHAYS, Mr. WU, Ms. ESHOO, Mr. MCINTYRE, Mr. DINGELL, Ms. HOOLEY of Oregon, Mrs. TAUSCHER, Mr. LEWIS of Georgia, Mr. SCOTT, Mrs. MEEK of Florida, and Mr. DOOLEY of California.
H.R. 1996: Mr. PALLONE.
H.R. 2098: Mr. FOLEY.
H.R. 2117: Mr. SANDERS.
H.R. 2156: Mr. FROST.
H.R. 2290: Mr. WILSON of South Carolina.
H.R. 2373: Mr. SMITH of New Jersey, Mr. SHADEGG, Mr. RYAN of Wisconsin, Mr. CHABOT, Mr. WILSON of South Carolina, Mr. BARTLETT of Maryland, Mr. HOSTETTLER, Mr. DEMINT, and Mr. JONES of North Carolina.
H.R. 2466: Mr. COMBEST.
H.R. 2483: Mr. ISTOOK and Mr. RAMSTAD.
H.R. 2570: Ms. NORTON, Mr. OWENS, and Mr. THOMPSON of Mississippi.
H.R. 2649: Mr. SHOWS, Mr. WAMP, Mr. DEAL of Georgia, Mr. BOEHNER, Mr. HERGER, Mr. DEUTSCH, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. COBLE, Mr. GREEN of Wisconsin, Mr. ARMEY, Mr. DAVIS of Illinois, and Mr. POMBO.
H.R. 2874: Mr. LEWIS of Georgia.
H.R. 3109: Mrs. DAVIS of California and Mr. MCINNIS.
H.R. 3139: Mr. RODRIGUEZ.
H.R. 3246: Mr. POMEROY.
H.R. 3278: Mr. CAPUANO.
H.R. 3283: Ms. KAPTUR, Mr. SCHIFF, Mr. KUCINICH, Mr. BAIRD, Mr. ROTHMAN, Mr. GUTIERREZ, Mr. LYNCH, and Mrs. DAVIS of California.
H.R. 3321: Mr. KENNEDY of Rhode Island.
H.R. 3333: Mrs. JO ANN DAVIS of Virginia.
H.R. 3414: Mr. TAYLOR of Mississippi and Mr. BERRY.
H.R. 3450: Mr. TANNER, Mr. LOBIONDO, and Mr. REHBERG.
H.R. 3464: Ms. NORTON.
H.R. 3488: Mr. CROWLEY.
H.R. 3492: Mr. FROST.
H.R. 3681: Mr. SANDERS.
H.R. 3741: Mr. ACKERMAN.
H.R. 3794: Mr. WALSH, Mr. WOLF, and Mr. OBERSTAR.
H.R. 3831: Mr. EHRLICH and Mr. RILEY.
H.R. 3895: Mr. ROYCE and Mr. JEFF MILLER of Florida.
H.R. 4084: Ms. SCHAKOWSKY.
H.R. 4483: Mr. BALDACCI and Mr. HOSTETTLER.
H.R. 4575: Mr. EDWARDS.
H.R. 4582: Mr. GRAHAM.
H.R. 4600: Mr. MCINNIS, Mr. TIAHRT, and Mr. SMITH of Michigan.
H.R. 4614: Mr. ABERCROMBIE.
H.R. 4701: Mr. HEFLEY.
H.R. 4706: Mr. ENGLISH.
H.R. 4763: Mrs. EMERSON, Mr. LANTOS, Mr. FATTAH, Ms. WOOLSEY, Mr. HALL of Texas, Mr. SOUDER, Mr. CLAY, Mr. WOLF, Mr. SIMMONS, and Mr. DAVIS of Illinois.
H.R. 4785: Mr. HEFLEY.
H.R. 4842: Mr. PAUL.
H.R. 4904: Ms. BERKLEY and Mrs. DAVIS of California.
H.R. 4963: Mr. WAXMAN, Mr. LANGEVIN, and Mr. TOOMEY.
H.R. 5016: Mr. WATTS of Oklahoma.
H.R. 5033: Mrs. JO ANN DAVIS of Virginia.
H.R. 5037: Mr. SANDERS.
H.R. 5047: Mrs. MALONEY of New York.
H.R. 5085: Mr. FRANK, Mr. SOUDER, Mr. CLEMENT, Mrs. DAVIS of California, Mr. BISHOP, Mr. SAXTON, and Mr. SAWYER.
H.R. 5119: Mr. NETHERCUTT.
H.R. 5166: Mr. REHBERG.
H.R. 5173: Mr. KOLBE and Mr. PLATTS.
H.R. 5191: Mr. GUTIERREZ.
H.R. 5250: Mr. RANGEL, Mr. DOYLE, Mr. NORWOOD, Ms. WOOLSEY, Mrs. KELLY, Mr. BROWN of South Carolina, Mr. LATOURETTE, and Mr. THUNE.
H.R. 5293: Ms. MCCOLLUM, Ms. BROWN of Florida, Mrs. JONES of Ohio, Mr. NADLER, Mr. GONZALEZ, and Mr. RUSH.
H.R. 5316: Mr. OTTER and Mr. REHBERG.
H.R. 5317: Mr. SOUDER.
H.R. 5319: Mr. AKIN.
H.R. 5326: Mr. BAIRD.
H.R. 5381: Mr. NETHERCUTT.
H.R. 5414: Mr. RILEY.
H.R. 5432: Mrs. THURMAN.
H.R. 5445: Mr. OXLEY, Mr. KELLER, Mr. ANDREWS, and Mr. HOBSON.
H.R. 5446: Mr. COOKSEY.
H.R. 5449: Mr. PASTOR and Mr. BECERRA.
H.J. Res. 6: Mr. EVANS.
H.J. Res. 86: Mr. VITTER.
H.J. Res. 108: Mr. RILEY.
H.J. Res. 110: Mr. BISHOP, Mrs. MEEK of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. CHRISTENSEN, Mr. WYNN, Mr. CUMMINGS, and Mr. CLAY.
H. Con. Res. 333: Ms. SCHAKOWSKY.
H. Con. Res. 432: Mr. FARR of California.
H. Con. Res. 445: Ms. HART, Mr. WICKER, Mr. BACHUS, Mr. ARMEY, Mr. CANTOR, Mr. BARTLETT of Maryland, Mr. GOODLATTE, and Mr. JONES of North Carolina.
H. Con. Res. 447: Mr. CANTOR, Mrs. JONES of Ohio, Mr. STARK, Mr. MENENDEZ, Mr. SMITH of New Jersey, Mr. GUTIERREZ, Ms. WATERS, Mr. SCHAFFER, Mr. DICKS, Mr. GREENWOOD, and Mr. CONYERS.
H. Con. Res. 466: Mr. FROST.
H. Con. Res. 473: Mr. WATT of North Carolina.
H. Con. Res. 477: Mr. FLETCHER, Mr. NEAL of Massachusetts, and Mr. TERRY.
H. Con. Res. 480: Mr. GONZALEZ and Ms. SLAUGHTER.
H. Con. Res. 454: Mr. SERRANO.
H. Con. Res. 468: Mr. SMITH of Michigan and Ms. ROS-LEHTINEN.
H. Con. Res. 484: Mr. PHELPS, Mr. SABO, and Mr. ANDREWS.
H. Con. Res. 522: Mr. ISSA, Mr. BOSWELL, Mr. DOOLEY of California, and Mr. GUTIERREZ.
H. Con. Res. 549: Ms. ROS-LEHTINEN, Mr. ENGLISH, Mr. KERNS,, Mr. BURTON of Indiana, and Mr. FOSSELLA.

United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

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# Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of this Nation and Lord of our lives, in each period of history, You have blessed us with great leaders who have exemplified love for You and dedication to our country. Today we celebrate such a man. Thank You for Senator STROM THURMOND.

By Your providential care, on May 25, 1997, he became the longest serving Senator in our Nation's history. Yet, it is not just the quantity, but also the quality of these years service motivate our admiration. So today we join with all Americans in thanking You for his outstanding service to the Senate, to his beloved South Carolina and to the Nation.

Thank You for the enrichment of our lives by this man. He has shown us the courage of firm convictions, the patriotism of love for this Nation, and true commitment to the Senate. We praise You for the personal ways he has inspired each of us. He is an affirmer who spurs us on with words of encouragement. Your Spirit of caring and concern for individuals shines through this remarkable man.

Gracious God, may Senator THURMOND know of our affirmation, feel our love, and be encouraged by Your blessing. You are our Lord and Saviour. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, September 25, 2002.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mr. REED thereupon assumed the Chair as Acting President pro tempore.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

## SCHEDULE

Mr. REID. Mr. President, this morning there will be a period of morning business until 10:30 a.m., with the time equally divided between the two leaders or their designees. At 10:30 a.m., the Senate will vote on the Byrd amendment regarding firefighting and drought on the Interior Appropriations Act. If cloture is not invoked, there will be an immediate vote on cloture on the Lieberman substitute amendment to the Homeland Security Act. If cloture is not invoked on the Lieberman amendment, the Senate will remain on the Homeland Security Act, and Senator GRAMM will be recognized to offer an amendment.

Mr. President, I would also say the vote is scheduled at 10:30, and I have been asked by a number of Senators to keep it that way. There are important committee hearings going on and which need to go on. So if there is a request to extend the time, if I am not on the floor, I would hope the Presiding Officer would object in his capacity as a Senator from the State of Rhode Island because it is important to keep the time for the vote at 10:30.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each, and the time to be equally divided between the two leaders or their designees.

The Senator from Minnesota.

Mr. DAYTON. Mr. President, I ask unanimous consent that I be permitted 15 minutes, if necessary, to complete my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## THE ECONOMIC SECURITY OF THE AMERICAN PEOPLE

Mr. DAYTON. Mr. President, as a member of the Senate Armed Services Committee, I have spent many hours in the last few weeks looking at matters of national security.

As the Presiding Officer knows—he is also a member of that committee—the hearings we have held, thanks to our outstanding chairman, Senator LEVIN of Michigan, have been invaluable. I also thank the administration for providing us with briefings and meetings to give us the best possible understanding of the situation we face.

I also serve as a member of the Governmental Affairs Committee. I have

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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spent the last couple months on the legislation creating the Department of Homeland Security. I pay tribute to the chairman of that committee, Senator LIEBERMAN, who is also the author of that legislation. I think it is tragic that legislation has been hung up here in the Senate for matters of political grandstanding rather than substantive disagreement.

But there has been very little attention paid on the Senate floor or in Washington recently to the economic security of the American people. Frankly, if this administration has its way, I think there will be no attention paid to economic security at all over the next 6 weeks. If you look at the condition of the economic security of this Nation, for most Americans, you can understand why the White House wants to do anything possible to change the subject.

Yesterday's papers, alone, had one day of economic news that would say we ought to put the economic security of this country on the highest level of alert, a code red, for disaster, disaster, disaster.

As the papers reported yesterday, the Nasdaq exchange fell to its lowest level in 6 years, 77 percent below its high in the year 2000; a 39-percent drop in this year alone.

The S&P 500 dropped near its 5-year low, 45 percent below its high just a couple years ago, and a 27-percent drop in this year alone.

The newspapers yesterday said the stocks were surging in July and August of this summer. There was hope, optimism for an economic recovery being underway. But what happened? War scare happened. The Dow Jones has dropped almost 1,400 points since August 22 of this year, a 14-percent drop in its entire value in just 1 month.

Why? Well, yesterday's Washington Times said: ''On concerns about the economy and a war.''

The Washington Post said: Uncertainty in the economy and a possible war in Iraq. The Times and the Post agree.

According to the chief strategist for Lehman Brothers, the stock market is now heading toward its third consecutive down year, which would be the first time since World War II—the first time in over half a century—that the stock market has dropped for 3 consecutive years.

That means the 401(k) account or the IRA or the private savings accounts of many Americans are worth half, or even less than half, of their value when President Bush took office.

Unfortunately, Mr. President and Members, it is more likely to get worse than better.

A Wall Street Journal headline yesterday said: ''Is Your Portfolio Ready for War?—Iraq Attack Could Slash S&P 500 by 10%.'' That is another 10 percent in addition to what has happened already.

Crude oil prices were reported yesterday as topping $30 a barrel, the highest level in 19 months. The number of Americans out of work in this country since February of 2001 has increased by 2,300,000 of our fellow citizens. Let me say that again. The number of Americans out of work in this Nation has gone up since February of 2001 by 2,300,000; and we can't get an extension of unemployment benefits passed in the Senate to protect those who have lost their jobs and are suffering the drastic financial consequences.

Unfortunately, it is not likely to get any better, because the leading economic indicators fell in August for the third straight month.

The Wall Street Journal said their consensus economic forecast for the last quarter of this calendar year—2002—has dropped 16 percent, and it also has been revised downward for the beginning of next year.

The chief economist for Wells Fargo Bank—a good Minnesotan, Mr. Suysoh said a war with Iraq could bring oil prices to over $40 a barrel and cause a major recession.

Some have said the administration decided to make the possibility of a war with Iraq the main topic this fall, because the economic condition of this country was so bad. Well, they have succeeded in making the war with Iraq the main topic, and they have succeeded in making the state of our Nation's economy even worse.

Those comments about orchestrating the timing are not mine. They are the words of the White House Chief of Staff, Mr. Andrew Card, reported on September 7 that the White House waited on its PR offensive about the possibility of war until after Labor Day. He said:

> From a marketing point of view, you don't introduce a new product in August.

That is one heck of a product. This Senator's judgment, as a member of the Senate Armed Services Committee, is that Mr. Card is being honest.

I have seen no new information and I am aware of no imminent threat to this country. The war scare that is going on now. The hurry-up-and-vote pressure on the Senate right now. The pressure to OK the first preemptive attack in this Nation's 213-year history. They are the first installment of a doctrine which the President announced in June, the right to a preemptive strike by the United States of America.

What would happen in this world if every other nation followed suit with a preemptive strike against a possible future threat? What about India and Pakistan, who both possess nuclear weapons? What about Israel and the Palestinians, China and Taiwan, or North Korea and South Korea?

Does anyone stop to think whether this doctrine of preemptive strike would make the world more or less secure?

Mr. Card, the White House Chief of Staff, is right. This new product has caused quite a PR sensation. It is taking over the headlines—it has replaced the stock market with Saddam Hussein. Talk about going from bad to worse. The trouble is that the stock market is also going from bad to worse.

The number of unemployed in America has gone from bad to worse. The economic outlook of this Nation has gone from bad to worse. The Federal budget forecast has gone from bad to worse. The economic security for most Americans has gone from bad to worse.

I can understand why the White House might not be aware of all this, because the contributions to the Republican political committees are at record highs.

Yesterday's headline again: ''GOP Committees See a 40-Percent Increase in Soft Money.'' Their bank accounts outweigh the Democrats by more than 2 to 1. Their contributors have good reasons to be grateful.

The Brookings Institute reports that the top 1 percent of American taxpayers—the wealthiest 1 percent of the people in this country—got 37 percent of last year's tax cut. They pay 26 percent of the taxes, and they got 37 percent of the tax cut. The average tax cut for the wealthiest 1 percent of the people in this Nation under last year's bill was over $45,000. The average pretax earnings of the top 1 percent is over $1.1 million, and they got an average tax cut of over $45,000.

I have to say that this administration does have an economic recovery plan. The trouble is it is limited to the wealthiest 1 percent of Americans. For the rest of America, we are in a real-life survival show. They lose their jobs. The losers lose their health insurance. They lose their retirement investments. And the winner of the show is someone like Jack Walsh, former chairman of General Electric. He has an annual pension of $9 million. I hope that was indexed to inflation.

General Electric shareholders, which include retirees whose portfolios, as I said earlier, dropped by 50 percent in the last 2 years, also pay for Mr. Walsh's car and driver and for his floor seats at the New York Knicks basketball games. They pay for his boxes at both the Boston Red Sox and New York Yankees baseball games. They pay his fees to four country clubs, and more.

I tell you, some corporate executives are no longer satisfied with golden parachutes. They take the whole airplane.

American taxpayers ought to be asking themselves: Why does this guy need a tax cut? Why did this administration insist on squandering over $2.2 trillion over the next 10 years on tax cuts where over one-third of the benefits go to the wealthiest 1 percent of the people in this country? It will cost the Federal Government $500 billion more over the next 10 years just on the higher interest payments on the Federal debt. That is $500 billion more in taxes to pay for fiscal irresponsibility. That provides nothing for homeland security. That provides nothing for special education; nothing for anything that benefits the people of America.

In 1 year, the non-Social Security budget of this country has gone from a 10-year forecast a $3.1 trillion surplus to a $700 billion deficit. That is an almost a $4 trillion drop in 1 year. Not even Arthur Andersen can hide that number.

Yesterday's paper reported that the Vice President is indignant about suggestions that this war scare, this ''warphoria'' has been timed for political benefits this fall.

I wouldn't be indignant. I would be outraged, if the White House Chief of Staff is correct in what he said—that the White House waited to introduce its ''new product'' until the fall of a midterm election. Only the people who were responsible for those decisions know why they made them.

But the American people will ultimately hold them responsible for those decisions. The war scare has wiped the economy off the headlines. It has also wiped any economic recovery for this country off the map. It has wiped many Americans' jobs out of existence, and wiped many Americans' prosperity from comfort to despair. If all of this is absolutely necessary, it is unfortunate. If it is not, it is unforgivable.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President. I will be very brief. I was going to ask the Senator from Minnesota a question.

I will be brief because I know my colleague from Wyoming is waiting.

I wanted to first compliment him for his remarks and pose a thought and a question. I would be interested in what he has to say.

The President thinks strongly that Saddam Hussein must go, and go quickly. All of us are thinking about that and wrestling with that. I am not going to comment yes or no on that. The President should be spending time and effort focusing on it. It is a very important issue. I don't begrudge him for doing that. He is spending maybe half of his time on it. It seems to me the other half of his time is spent on going around the country campaigning—half his time on the war effort, and half his time going around the country campaigning for candidates, and the economy is not getting any of the President's attention.

As my friend from Minnesota has correctly laid out, it is going down, down, down. Every day there is a new headline. We have one in New York. The securities industry is going to lay off many more people at a time when we can't afford it. In every part of the country, you see this down, that down, and this down.

I make a plea to the President. Spend your time focusing on Saddam Hussein, but what about spending the rest of the time—instead of traveling around the country going to political events—focusing on the economy. We are a great Nation. We can do both. We can examine what we ought to do in Iraq. At the same time, we can start focusing on the economy and things such as getting people back to work, extending unemployment insurance, and lowering the cost of prescription drugs.

The President has been absent on every one of those issues. One doesn't exclude the other.

I ask my colleague: Does he agree with those sentiments? Am I not correct when we read that the President is spending one-half of the week going to different parts of the country simply campaigning, and that I haven't heard him pronounce a thing about the economy and what we are going to do about it in all too long a period of time? Then, when he says with sort of verbiage and nothing substantive, I do not know if they have a single plan.

I don't know if they have a single plan, even though they withdrew the tax cuts they proposed for the very wealthy. I ask my colleague, in light of his excellent remarks, would he agree with me that all Americans, Democrats and Republicans, Independents, want the President to come back home and spend some time focusing on the economy; that he can do both, we can do both, deal with the war issue and focus on the economy?

Mr. DAYTON. I absolutely agree with the Senior Senator from New York. What I find particularly disturbing is, as I know from experience in Minnesota, where the President has been to my State three times in the last year in the midst of my colleague's very difficult election campaign, the President has come in, raised a couple million dollars, and has charged part of the cost of this trip to the American taxpayers. He gives one 20-minute policy speech somewhere and then goes on to raise millions of dollars for campaigns, and the American taxpayer is paying the bill.

I agree with the Senator, the President ought to stay at home. He should focus on the economy, in addition to Iraq. And if he does travel for political reasons, the American taxpayer should not be paying the bill.

Mrs. BOXER. Will the Senator yield for a question?

Mr. SCHUMER. I am happy to yield to my friend from California.

Mrs. BOXER. I was astounded to see some of the recent news coming out on the economic front, the gap between the middle class and the wealthy, the gap between the rich and the poor, the fact we see in many categories the worst economy in 50 long years in terms of jobs lost in the private sector, in terms of the sluggish growth of the GDP, the number of foreclosures. It is stunning. One has to be concerned that this administration is giving this no attention whatsoever, which was my friend's point.

We look at a President who is spending half his time on foreign policy; that is fine. This Congress is going to help in that area because we have a lot of ideas on how to meet the threat Iraq poses. On our side of the aisle, there will be different opinions on how to meet that threat, which will show the strength of our democracy, and that this party is, in fact, a broad umbrella, which is healthy in the long run for the country.

The other half of the time seems to be spent on the road campaigning. I agree with my friend. Given the economic statistics—the stock market, we are looking at maybe a $4, $5 trillion loss, the worst in 50 years, and the fact pensions are down—does my friend believe we ought to perhaps come up with something specific to ask the President?

For example, he keeps calling us to talk about foreign policy. Why doesn't he call us to the White House to talk about this economy, to get the best ideas of Republican Presidents and Democratic Presidents? This isn't partisan. People are suffering out there, Republicans and Democrats, Independents, young and old, for different reasons. So would my friend think that might be a good way for this President to show he cares as much about the everyday issues our people are facing as he does about electing Republicans, and perhaps this would be a way to break through on this economy?

Consumer confidence is down. Perhaps that would give a spur to our people and bring us together just as we get together on foreign policy.

Mr. SCHUMER. I thank my colleague for her question and comments. She is right on the money. It is a great idea. We are called, our Democratic leadership, along with Republican leadership, to the White House on numerous occasions to discuss the war effort. That is good. That is how America should work, particularly when it comes to wartime. But in a sense we have an economic war here at home, as my good friend from California has enumerated: people losing income; people losing jobs; people worried about the future; pensions way down.

Why are we not being called to the White House for an economic summit on what to do there? I speak for all of us: We would be happy to meet the President halfway or a good part of the way in terms of doing things because the people are languishing. To ignore the economy and spend all this time running around the country campaigning is a dereliction of duty. He is not even up for election.

I thank my colleague for the question.

Ms. STABENOW. Will the Senator yield?

Mr. SCHUMER. I am happy to yield for the last time.

Mr. THOMAS. Could the Chair tell me what the system is this morning? Are we going to have one side have all the time?

The ACTING PRESIDENT pro tempore. The Senator from New York has the floor. There are 10 minutes allotted to each Senator. The Senator from New York has the floor.

Mr. THOMAS. How much time remains?

The ACTING PRESIDENT pro tempore. He has 1 minute remaining.

Mr. THOMAS. I thank the Chair.

Mr. SCHUMER. I yield the 1 minute to the Senator from Michigan.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I thank the Senator from New York.

Every economic indicator we want to go up is going down, and every one we want to go down is going up. The Senator and I have worked together on one of the most critical issues that affect Americans, their pocketbook and quality of life, which is access to prescription drugs. I share the concern that we do not see the focus on the economy and what needs to happen in the economy. The Schumer-McCain bill, now in the House of Representatives, which would lower prices for prescription drugs, is one very important piece of that economic puzzle. When we see that more people are lower income, their health care costs are rising, I appreciate his leadership on that issue.

Mr. SCHUMER. I thank the Senator for her leadership as well.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

## SENATE AT A STANDSTILL

Mr. THOMAS. Mr. President, it is interesting. I wanted to visit a little bit about where we are on the floor and the fact we are not moving. We have been in the same place for 4 weeks.

I understand the frustration of the folks on the other side of the aisle. I recognize, too, that we are in the full swing of an election year. It is blame-game time, where we all stand up and blame the President for what is going on when there is no effort on the other side of the aisle to move off where we are and take up some of the issues we ought to be addressing.

We talk about prescription drugs. Prescription drugs is not on the floor because the leadership has not moved from where we are to make time to get it up here. I get a little exasperated, using all this time for political comments when there are no ideas of what to do coming from the other side of the floor.

Actually, that wasn't why I came here, but I have to tell you it is pretty frustrating to continue to hear that sort of thing—blaming the President when these folks have no idea what they want to do and no suggestions, no leadership coming from the Senate. What are we going to do about it?

What we have done is continue to work on two bills for about 4 weeks now. Homeland defense is one of the most important issues we have before us, and it has been stalled. Although we have differing views on how it ought to proceed, that is fine, that is part of the system here. We ought to take a vote on those views and move forward, but instead of that, we have had stalling on the other side, no chance to vote on amendments, simply wanting to always vote on cloture, which is what we are faced with today.

The unwillingness of the majority leadership to allow votes on certain amendments has created a standoff. We keep hearing about what else you want to talk about over there, but we won't move off where we are. It is pretty frustrating. It seems as though that is the political moment. We have to really get down to what it is.

The same thing is true of Interior appropriations. It has been on the floor for 4 weeks. Yet we can't seem to move it to get some of the things done. For those of us in the West, it is very important—public land fees and, so on, in which we are so involved. Maybe even more important than that, the more immediate issue, there is some drought relief in this bill. There is something on forest fire suppression. We can do those things. But have we moved? No.

We continue to stall and to have votes on cloture, which does not resolve the issue. All we need to do is have a vote on the amendments. If you don't like the amendments, have a vote to table them. That is where we ought to be. That is the system.

To get up and start spending all of our time blaming the President for an economic slowdown that began under the Clinton administration, according to all the people who are familiar and knowledgeable about it, is to be a little tiresome, when we have an opportunity to move forward. There are a lot of things we ought to be doing in the relatively short time we have left.

Obviously, homeland defense is one that has to be done.

We need to debate the Iraq resolution, which is going to take some time. We need a CR if we are going to adjourn on the 19th of October. We have an energy bill which we ought to move forward. We talked about pharmaceuticals and Medicare. We could have done something in our committee, but the majority leader pulled it out of the committee. We will not have time to accomplish these items as long as we remain on the pending bills.

It seems to me it would be very frustrating to want to spend the time blaming the President for the economy when the Senate is not doing what we can and moving forward.

I will not take any more time. We ought to look at what we are accomplishing instead of trying to put the blame on everybody else when we have not succeeded in doing what we ought to be doing. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I understand the distinguished Senator from Michigan would like 5 minutes so she can then assume the Chair. I will be happy to defer to her for 5 minutes, if I can then be recognized after her and have the attention of the body. I will be happy to accommodate her.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Michigan.

## THE ECONOMY

Ms. STABENOW. Mr. President, I thank my friend for his courtesy this morning, and I appreciate the opportunity to speak for a few moments before assuming the Chair. I did want to follow up on the discussion this morning on the economy. A few minutes ago, I indicated that every economic indicator that should be going down is going up: job losses; health care costs; foreclosures; national debt; interest rate costs; Social Security trust fund raid. Every part of the economy we wish to be going up is going down: economic growth, down; business investment, down; the stock market, down; retirement accounts, down; consumer confidence; minimum wage.

We have a very disturbing situation. I wish to speak for a moment about one piece of the economy that is so critical in the quality of life of American families and American businesses which are struggling to pay the costs. Let me speak to one piece of the economic record of the last 18 months, and that is that workers' payments for health insurance is soaring.

We are seeing that the cost of insurance to cover a family has gone up 16 percent, and the cost of an individual has gone up 27 percent, over one-fourth increase in their costs. The costs are going up. Their savings are down, their investments are down, and at the same time, we are seeing the biggest part of the reason for that health care cost going up as a result of the cost of prescription drugs.

We are seeing overall prescription drugs going up over three times the rate of inflation. This is a critical part of the economic pie, the costs for consumers right now. It is not inconsequential. It is not like buying a new pair of tennis shoes or ''Gee, I would like to have a new coat.'' This is life-saving medicine, the difference between life and death, or whether a person goes into a nursing home or is able to live at home. I am very concerned about this. What is the response?

We in the Senate have been focused on Medicare prescription drug coverage and lowering prices for everyone. We have been successful in passing a bill that, in fact, lowers prices and creates more competition in the marketplace once a patent expires. But what is the response of the pharmaceutical industry within this context, with the struggles that are going on for families, businesses, and farmers across the country? What is their response right now? A new PR campaign, not putting the millions of dollars into lower prices and making prescription medications available, lowering the premiums for small businesses. They have gone on a huge PR campaign.

We are seeing ads that I find, I have to say, absolutely outrageous. One says: ''Pray for a Miracle.'' It uses the picture of a child who, obviously, is deathly ill. It says: ''Pray for a Miracle,'' because they say generic drugs will never cure him.

In the small print it says: ''They don't do research.'' Of course they do not do research. They do not do research. They do not have to do research. The idea of generic drugs is to take the formulas and the patents after the research has been done, after the American people have helped to pay for that research through NIH funding, tax deductions, and supporting the companies with a 20-year patent so they do not have competition in recovering their costs.

The whole point of generics is the American public made a deal that, once the 20 years is up, once those subsidies are up, they will have that formula available so generic companies can manufacture those drugs and lower the prices.

Instead of working with us to have a system that works both for brand name companies to develop these new brand name drugs and also for the American people to get the bargain they are supposed to get, which is lower prices, the companies are putting millions of dollars into a front senior citizen group, ads on the air, getting involved in elections and running ads scaring people that somehow if we let the system work as we created it over the years in a bipartisan way, if we let the system work, this child, who is obviously seriously ill, will somehow be hurt. I find that absolutely outrageous.

I am concerned in the context of this economy and the debate and the American people trying to figure out when they sit down in the morning what they are going to pay for—are they going to be able to afford the health care premium? Is that senior going to be able to afford their medicine? Are they going to be able to pay for the clothes kids need for school? Are they going to be able to do the other things they need for their family?

Instead of working with us, the companies have chosen an outrageous PR propaganda campaign. I urge them to work with us to do the right thing. I thank the Chair.

The PRESIDING OFFICER (Mr. EDWARDS). The time of the Senator has expired.

The Senator from Missouri is recognized.

## INTERIOR APPROPRIATIONS

Mr. BOND. I thank the Chair.

Mr. President, I have been listening to some of my colleagues on the other side of the aisle saying the economic problems we have are somebody else's fault. They blame the President. Unfortunately, in this instance, the President cannot pass legislation. The President was successful in working with us to pass the beginning of tax relief which took effect in 2001, and most responsible economists I know suggest that helped lessen the impact of the downturn which began in 2000, beginning as early as the first quarter of 2000 and hitting its peak the end of 2000 and the beginning of 2001.

We could do some things in this body. We could pass some laws that would make a difference and help the economy get going. Frankly, one of the great frustrations I feel is we cannot get about the business that we are supposed to do on the Senate floor. If the majority leadership had allowed the Senate Energy Committee to work its will on an energy bill, the committee would have reported out a proposal to allow drilling on 2,000 acres in the barren northlands above the Arctic Circle in Alaska. That is called ANWR.

ANWR not only has the potential to replace the oil we must now buy from the malevolent, deadly dictator Saddam Hussein, ANWR could put up to three-quarters of a million people to work throughout the country, not just in the drilling and work in ANWR, but providing the materials, making the steel and turning it into equipment, pipelines, providing the infrastructure through the private sector that we need to bring that oil down from ANWR.

I am still hoping we can get ANWR in the energy bill, a tremendous boost for the economy. Where else do we need a boost for the economy? In large construction projects. There are construction projects shut down all around the country because they cannot get insurance against terrorism.

Terrorism risk insurance was dealt with in the Banking Committee on a bipartisan basis. I understand they reported out a good bill to provide that the Federal Government would be a backstop, on a sharing basis, for the reinsurance of terrorism risk.

The majority leadership took it away. We cannot get a terrorism risk insurance bill through this body because the majority leadership has changed it into something that provides great new opportunities to sue the victims of terrorist attacks for punitive damages. Punitive damages are not a way to build the economy. Those are two pieces of legislation we could have gotten finished to help the economy get going. Making the tax cut permanent would be a third way of doing it.

I came to the floor to express what I believe is a great sense of frustration by all of us. The Senate is stuck in neutral.

I have only been in the Senate 16 years, and by some standards that is a pretty short time. We honored our distinguished senior colleague from South Carolina yesterday, and we know of the record of great service of others in this body, but in the short time I have been here I have never seen this body so dysfunctional. It is time we talked about why we are dysfunctional. What is happening? What has gone wrong? Why are we here? Quite simply, it is because some do not want to let us vote. This is the basic motivation and it is cloaked with all the talk about cloture and filibuster, but we are still on an Interior bill amendment which was offered 3 weeks ago. We are stuck because the majority leadership does not want us to vote on that amendment.

There is plenty of time to vote, but for some reason some are apparently afraid to vote. It is no more complicated than that. If we vote, we could get to the remaining amendments, pass the bill, and move on in the next day or two. If the majority does not like it, they could move to table it and we could have a vote; might win, might lose. We could at least have a vote.

I have worked a long time on appropriations bills. I have worked very diligently with the Senator from Maryland, the excellent chairman of the VA/HUD Committee. We have a bill we would like to present to the Senate because it deals with some very important things for veterans, for housing, for the environment, for economic development in our communities, for science, for space, for emergency management. We are ready and willing, and there are nine other bills that are ready, but when we spend more than 3 weeks on one appropriations bill, we are not going anywhere. We cannot get there until the Senate does what it is paid to do, which is to vote up or down, win or lose, and let the will of the Senate prevail.

Some are suggesting—and this, I believe, is truly outrageous—the sponsors of the amendment should pull the amendment so some do not have to cast a difficult vote. Yes, this is a political season and it is tough, but that is what we get paid to do. We have cast 223 votes this year, and I do not believe another one will make or break or overburden any of us.

The Senator from South Carolina and the Senator from West Virginia each have cast over 15,000 votes. They have shown they are not afraid to make hard decisions, and the hard decisions they have made have not taken them away. The sponsors of the Craig-Domenici amendment have had people die in their States. They have had millions of acres of trees, including old-growth trees, habitat, and wildlife, ruined by fire. Houses have burned. A sound and responsible solution has been put forward based on good science and sound forestry management. The Senate should have the courtesy, if not the common sense, to vote on it.

How poorly are we willing to treat the Senators from these Western States? I believe these Senators and their constituencies deserve a vote. If Senators want to vote against them, vote against them. They will have to explain it if they vote for them or if they vote against them.

Senator CRAIG does not have an opportunity to slip this provision into a conference report, so he is doing what the Senate should allow him to do and what we are paid to do, which is to offer amendments and have an up-or-down vote. Maybe they want a commitment to drop the amendment in a conference report. Why can't we vote?

There are a lot of reasons why appropriations bills are difficult to resolve,

but this should not be one of them. This is not a question of how much money we have available. We should have voted 3 weeks ago. We could have completed four or more bills in this time, but we are at a stalemate.

Given the choices, this should be an easy call. Should the sponsors be asked to ignore their burning States, the danger of horrific, catastrophic forest fires, and set their amendments aside, or should the people who are preventing a vote decide they should let the Senate do what we are here to do, what our constitutional responsibility is to do, which is to make decisions on hard choices and then vote?

We have been in session for over 3 weeks, since Labor Day, and we have cast a whooping 16 votes. Six of these votes were unanimous. So we have cast 10 votes on contentious issues, which is less than 1 vote per day. That is not exactly heavy lifting. This time of year, we could probably do two, three, or even four votes a day and not work up a sweat, but we are not able to do that. We cast 5 unanimous votes, and we cast a unanimous vote on procedure in 16 days, which leaves 10 votes.

Some are saying maybe we ought to come in on Saturdays. Unless we are permitted to vote, what good is that going to do? If we cannot vote on Wednesday, what makes my colleagues think we could vote on Saturday, unless the objection to voting was lifted?

I do not want to shut off any debate, but when the debate is over, we should vote. If anyone has anything to add after 3½ weeks of debate, then I think they may have missed their opportunity.

I have spoken a couple of times. Obviously I have not moved many souls or they would all be stampeding to say, let's restore sound forestry management. Maybe they were not listening, maybe I was not persuasive, but I have had my shot. I think it is time we get on with it.

I compliment the Senator from South Dakota for figuring out a way to protect his State. What he did was sound forestry management. I simply want to see other people who live around the forests have the same opportunity as the people in South Dakota, which is to be free from the danger of catastrophic forest fires.

I have farmers who want farm aid. South Dakota has an interest, I am sure. I voted on farm aid. It was not germane or relevant to the bill, but I voted for it. Why can't the Senators whose States are on fire have a vote on something that is directly relevant to the Interior bill before us? I have not heard one substantive, rational explanation as to why Senators whose States are on fire should not be entitled to vote, even a negative vote.

I say to our distinguished leadership, explain to the people of the Western States that are on fire why they do not deserve a vote. The amendment is pending. Let's vote up or down; table it or not. South Dakota got special protection. Are Colorado, California, Montana, or Utah any less important than South Dakota? I think not.

Have the national interest groups gotten so powerful—and let me say, when we are talking national interest groups, I will let everyone in on a secret. It is the Sierra Club. Have the national interest groups and the Sierra Club gotten so powerful they can prevent Senators from standing up for the safety of people in their own States?

I note that the groups that oppose this amendment are very important and powerful, but until now I did not think they were powerful enough to shut down the Senate. I understand why the authors of the amendment would not want to pull their amendment because their States are on fire and in danger of being on fire. Given all the important matters funded in Interior, given that $5.9 billion in drought assistance for fire suppression money, I do not understand why we cannot vote. Substantively or politically, what is more important than assistance to prevent fires and assistance for drought-stricken ranchers? It is clear to those who follow the Senate, there is bad politics for some who may not want to vote.

I appreciate some activists do not want this passed—that is their right—but we are not obliged to skip votes because an outside group does not want to see a vote on it. They have their right to voice their opposition on the amendment, but they should not have the power to stop the Senate from voting. That is a shame. This matter should be resolved in the way it should be resolved, with a vote; move to table and vote up or down. I think Senator CRAIG's effort to prevent forest fires is worth the Senate's time.

We have lots of forests the size of New Jersey. Firefighters and innocent citizens in South Dakota are protected. But Idaho, New Mexico, Montana, and Missouri should be, too.

I plead with those objecting to voting to permit us to do what the people have sent us here to do.

Before I conclude, I call to the attention of my colleagues in the Senate an editorial from yesterday's Wall Street Journal. It says the Democratic leadership is:

> . . . now blaming Republicans for stalling the appropriations bill. In fact, the bill would clear quickly if he'd just hold a vote on the Craig amendment. But the Majority Leader knows a vote would force his party either to side with Mr. Craig (thereby alienating greens), or repudiate forest cleanup (thereby alienating voters this fall). We think it was a famous Democrat, JFK, who once said that to govern is to choose.

I ask unanimous consent that this article from the Wall Street Journal be printed in the RECORD.

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

DASCHLE'S BURNING SENATORS

If you want to know why Senate Majority Leader Tom Daschle can't get a spending bill for the Interior Department passed this year, look no further than his home state's Black Hills.

Those South Dakota mountains are at the center of a growing political debate over forest fires. All summer Senator Tim Johnson, also a South Dakota Democrat, had been taking heat from the state's rural communities for allowing green groups to stymie forest cleanup, a recipe for fires. So in July, to give Mr. Johnson a boost in his tight reelection fight against Republican John Thune, Mr. Daschle slipped a rider into a bill exempting his state from the very environmental regulations he'd long championed.

It took about a nanosecond for Western Senators, their own states in flames, to seize on this flip-flop and demand equal treatment. Idaho Republican Larry Craig offered an amendment to the Interior bill that would enact much of President Bush's new fire plan, as well as a South Dakota-style legal exemption for 10 million at-risk acres of forestland. Mr. Daschle—now trying to get back in green good graces—has tried twice to close Senate debate without considering Mr. Craig's amendment, and has lost both times.

And no wonder. This year's fires, and Mr. Daschle's rider, have become an enormous political liability for Western Democrats. They've had to explain to angry constituents why Chainsaw Tom was allowed to save his state's forests, while theirs were left to burn. And, with 6.5 million acres in ashes and more than 25 people dead this year, none of them want to oppose Mr. Craig's much-needed forest cleanup plan. California's Dianne Feinstein and Oregon's Ron Wyden, both Democrats, had even been trying to work out a compromise with Mr. Craig.

Mr. Daschle is now blaming Republicans for stalling the appropriations bill. In fact, the bill would clear quickly if he'd just hold a vote on the Craig amendment. But the Majority Leader knows a vote would force his party either to side with Mr. Craig (thereby alienating greens), or repudiate forest cleanup (alienating voters this fall). We think it was a famous Democrat, JFK, who once said that to govern is to choose.

Mr. BOND. I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Montana.

## FIREFIGHTING FUNDS

Mr. BURNS. Madam President, I rise today to address this third vote on cloture on the Byrd amendment directing the replenishing of firefighting funds for the Departments of Agriculture and Interior.

This vote really hinges on our desire to get drought relief to the West.

In my opinion, that is not what this debate is about. Drought relief has already been agreed to almost unanimously by this body. In other words, there were 69 votes for it. There is strong support in the Senate. I am a strong supporter for that relief.

What is happening here is the majority is saying it is our way, or the highway. America's farmers and ranchers know that is not the way we do business, or get business done. Solving problems takes compromise. I worked with the majority to get the ball rolling. I worked with the administration to get the ball rolling. We worked with the administration and the other side—not only the other side—for release last

week of money for livestock producers in drought-stricken areas. But now we see no compromise for realistic solutions. Every American has watched our forests burning every night on television. Yet the other side is reluctant to do anything about it—they have no conscience.

It does not change any law. It allows us to manage forest lands for the prevention of the disasters that we have had since 1998.

Come to my State and talk to the farmers and ranchers who have had drought for 4 years. Then, turn around and talk with people who love those forests. They have seen the forests burn for the last 4 years. And then tell me we should not have a vote in order to clean them up.

Have people lost their senses? They do not understand what happens in this biological world when we grow a renewable product—a renewable product. Have we had nothing in our schools that teach us?

I am like the old preacher who walked by a ranch one day. It was a nice Sunday morning. He said: Nice looking ranch you have got here.

The old rancher says: Yes, it is. You should have seen it while the Lord had it to himself.

We have people in this ecosystem.

These little groups, I might add, that have very little dirt under their fingernails—very little—are telling us to leave it alone, and Mother Nature will take care of it. The American people have seen that kind of management for the last 25 years. They have seen the results of it. It burned.

What is being denied here is a vote. We are being denied a vote on an issue that, sort of tongue in cheek, burns in the hearts of Americans. They don't like this. They do not want to see their forests go up in flames and have a renewable resource wasted when it can be prevented. That is what it is about.

We will reject cloture until the majority is willing to work on a compromise that will actually make a difference to Americans.

I want to associate myself with the words of our assistant leader on our side. Cloture is a terrible arrow in the quiver during these times on appropriations bills. It seems as though when we struck the deal for South Dakota less than 3 or 4 months ago, it was the right thing to do. It exempted all the laws.

Do we have a double standard here? Should those of us in other States who represent public lands which produce a renewable product not be afforded the same standard? We are not even asking for that much change. We are not exempting any law. We are not exempting anything.

What we are saying is make your case. Invoke a double standard, and then premise the argument that this is a vote against drought aid for American agriculture? It is absolutely absurd.

Any clear-thinking American who has watched the deterioration of our forests and who has seen the results can stand there, and who in this body can look them in the eye and say, well, that is the way it is?

I will tell you how many votes they will get against their proposal. I have heard maybe three or four will come down and give the reasons they are opposed to it to justify their vote, and to answer some of the questions we have.

It is not right. It is not only not right, but it is not fair.

I have real people living in my State, too, just like everywhere else. But the unwillingness to give us a vote, which is our right and a constitutional need to get the House of Representatives and the President a vote to actually pass laws, has brought us to a standstill in this body.

It is not right. It is not fair.

Mr. NICKLES. Will the Senator yield?

Mr. BURNS. I am happy to yield.

Mr. NICKLES. You mentioned drought aid. Am I not correct that drought aid cannot pass unless the bill passes?

Mr. BURNS. That is correct.

Mr. NICKLES. If one wanted to get drought aid to farmers, would it make sense, since that has been agreed to in the underlying bill, to have a vote on the Craig amendment, and it could be an up-or-down vote or a motion to table, dispose of the Craig amendment one way or another, and pass the bill?

Mr. BURNS. And move on. That is correct.

Mr. NICKLES. And every Member on this side of the aisle is willing to do that. No one on this side of the aisle is filibustering this bill.

Mr. BURNS. That is right. No preconditions. No either/or. If we are really serious about it, give us a vote. That is what we are fighting for, the privilege of voting. That is all. Defeat us if your conscience allows. But give us a vote.

I yield the floor.

Mr. REID. Mr. President, I ask unanimous consent for 1 additional minute on each side. Our side is up.

The PRESIDING OFFICER (Mr. FEINGOLD). Without objection, it is so ordered.

Mr. REID. I have listened to my friend from Montana and my dear friend from Oklahoma. You cannot change the Senate rules. They can say all they want that they are not filibustering this bill. This is the fourth week we are on the bill. If they want to get disaster aid to the farmers, they should allow us to go forward on this legislation. We can offer their amendment on other matters, if they really care about the farmers; 79 Senators said they did. Those people are waiting for relief as we speak. They should go ahead and allow us to pass this bill. In the meantime, the farmers get nothing.

It is not as if we are not fighting fires. There is $800 million that Senator BYRD and Senator STEVENS put in this bill for fighting fires. It is a question of their wanting to do away with judicial review, which we are unwilling to do.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. If people want to pass this bill, the way to pass the bill is to do it the way Senator REID and I used to manage the bill, and that is to vote. We get paid to vote.

For whatever reason, some people are afraid to vote on the Craig amendment. If we get on the bill, maybe someone will move to table the Craig amendment. We need to vote. The Senators from Montana, North Dakota, Colorado, Oklahoma, Texas, and other States that have fires are entitled to have forest management improvements just like South Dakota. What the Craig amendment is asking for is not as much as South Dakota received.

We are entitled to a vote. You can file cloture all you want, but we are going to have a vote. We are going to have a vote. To file cloture, so we do not even get a vote on the Craig amendment, will not happen. If cloture is invoked, we can still offer the amendment, so we are getting nowhere fast. We are not going to finish this bill until we get a vote.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5093, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5093) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

Pending:

Byrd amendment No. 4472 in the nature of a substitute.

Byrd amendment No. 4480 (to amendment No. 4472), to provide funds to repay accounts from which funds were borrowed for emergency wildfire suppression.

Craig/Domenici amendment No. 4518 (to amendment No. 4480), to reduce hazardous fuels on our national forests.

Byrd/Stevens amendment No. 4532 (to amendment No. 4472), to provide for critical emergency supplemental appropriations.

### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Byrd amendment No. 4480, as amended, to H.R. 5093, the Department of Interior Appropriations bill, 2003.

Debbie Stabenow, Harry Reid, Charles Schumer, Evan Bayh, Mark Dayton,

Jeff Bingaman, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Byrd amendment No. 4480 to H.R. 5093, the Interior appropriations bill, shall be brought to a close? The yeas and nays are required under rule XXII, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The yeas and nays resulted—yeas 51, nays 47, as follows:

[Rollcall Vote No. 224 Leg.]

YEAS—51

| | | |
|---|---|---|
| Akaka | Dayton | Leahy |
| Allard | Dodd | Levin |
| Baucus | Dorgan | Lieberman |
| Bayh | Durbin | Lincoln |
| Biden | Edwards | Mikulski |
| Bingaman | Feingold | Miller |
| Boxer | Feinstein | Murray |
| Breaux | Graham | Nelson (FL) |
| Byrd | Harkin | Nelson (NE) |
| Campbell | Hollings | Reed |
| Cantwell | Inouye | Reid |
| Carnahan | Jeffords | Rockefeller |
| Carper | Johnson | Sarbanes |
| Cleland | Kennedy | Schumer |
| Clinton | Kerry | Stabenow |
| Conrad | Kohl | Wellstone |
| Corzine | Landrieu | Wyden |

NAYS—47

| | | |
|---|---|---|
| Allen | Fitzgerald | Nickles |
| Bennett | Frist | Roberts |
| Bond | Gramm | Santorum |
| Brownback | Grassley | Sessions |
| Bunning | Gregg | Shelby |
| Burns | Hagel | Smith (NH) |
| Chafee | Hatch | Smith (OR) |
| Cochran | Hutchinson | Snowe |
| Collins | Hutchison | Specter |
| Craig | Inhofe | Stevens |
| Crapo | Kyl | Thomas |
| Daschle | Lott | Thompson |
| DeWine | Lugar | Thurmond |
| Domenici | McCain | Voinovich |
| Ensign | McConnell | Warner |
| Enzi | Murkowski | |

NOT VOTING—2

| | |
|---|---|
| Helms | Torricelli |

The PRESIDING OFFICER. On this vote, the yeas are 51. The nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. BYRD. Mr. President, can we have order?

The PRESIDING OFFICER. The Senate will come to order. The majority leader.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the Byrd amendment No. 4480, as amended.

The PRESIDING OFFICER. The Senator has that right. The motion is entered.

## HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Lieberman substitute amendment No. 4471 for H.R. 5005, the Homeland Security bill.

Debbie Stabenow, Harry Reid, Charles Schumer, Evan Bayh, Mark Dayton, Jeff Sessions, John Edwards, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Lieberman amendment No. 4471 to H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The result was announced—yeas 49, nays 49, as follows:

[Rollcall Vote No. 225 Leg.]

YEAS—49

| | | |
|---|---|---|
| Akaka | Dodd | Levin |
| Baucus | Dorgan | Lieberman |
| Bayh | Durbin | Lincoln |
| Biden | Edwards | Mikulski |
| Bingaman | Feingold | Murray |
| Boxer | Feinstein | Nelson (FL) |
| Breaux | Graham | Nelson (NE) |
| Byrd | Harkin | Reed |
| Cantwell | Hollings | Reid |
| Carnahan | Inouye | Rockefeller |
| Carper | Jeffords | Sarbanes |
| Chafee | Johnson | Schumer |
| Cleland | Kennedy | Stabenow |
| Clinton | Kerry | Wellstone |
| Conrad | Kohl | Wyden |
| Corzine | Landrieu | |
| Dayton | Leahy | |

NAYS—49

| | | |
|---|---|---|
| Allard | Bunning | Craig |
| Allen | Burns | Crapo |
| Bennett | Campbell | Daschle |
| Bond | Cochran | DeWine |
| Brownback | Collins | Domenici |
| Ensign | Kyl | Smith (NH) |
| Enzi | Lott | Smith (OR) |
| Fitzgerald | Lugar | Snowe |
| Frist | McCain | Specter |
| Gramm | McConnell | Stevens |
| Grassley | Miller | Thomas |
| Gregg | Murkowski | Thompson |
| Hagel | Nickles | Thurmond |
| Hatch | Roberts | Voinovich |
| Hutchinson | Santorum | Warner |
| Hutchison | Sessions | |
| Inhofe | Shelby | |

NOT VOTING—2

| | |
|---|---|
| Helms | Torricelli |

The PRESIDING OFFICER (Mr. NELSON of Nebraska). On this vote, the yeas are 49, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture has not been invoked on the Lieberman substitute amendment No. 4471 to H.R. 5005, the homeland security legislation.

The PRESIDING OFFICER. The motion is entered.

Mr. DASCHLE. I thank the Chair.

AMENDMENT NO. 4738

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours of debate on the Gramm amendment, with the time to be equally divided between the Senator from Texas and the Senator from Connecticut or their designees.

The Senator from Texas.

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Texas, Mr. GRAMM, for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, and Mr. HAGEL, proposes an amendment numbered 4738.

Mr. GRAMM. I ask unanimous consent the reading of the amendment be dispensed with.

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

The text of the amendment is printed in today's RECORD under ''Amendments Submitted.''

The PRESIDING OFFICER. Who yields time?

The majority leader.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I wanted to take a few minutes of leader time this morning, before we get into the debate on the amendment offered by the Senator from Texas, to talk about a concern that I have wanted to avoid talking about for weeks. I am very saddened by the fact that we have debated homeland security now for 4 weeks. I have noted on several occasions that there is no reason, on a bipartisan basis, this body cannot work

together to overcome our differences and to pass a meaningful and substantive bill dealing with homeland security.

Some have suggested that the delay has been politically motivated, and I have said: I am not willing to believe that. In fact, yesterday I said: We intend to give the President the benefit of the doubt.

Over the course of the last several weeks, as we have debated national security, the issue of war in Iraq has become more and more prominent. And again, as I go back to my experience in 1991 and 1992, during a similar period—the fall and winter prior and after an election—I expressed the concern that our politics in this climate could easily create a politicized environment and, in so doing, diminish, minimize, degrade the debate on an issue as grave as war.

No one here needs to be reminded of the consequences of war. No one here should have to be admonished about politicizing the debate about war. But, Mr. President, increasingly, over the course of the last several weeks, reports have surfaced which have led me to believe that indeed there are those who would politicize this war.

I was given a report about a recommendation made by Matthew Dowd, the pollster for the White House and the Republican National Committee. He told a victory dinner not long ago—I quote—''The No. 1 driver for our base motivationally is this war.''

Dowd said war could be beneficial to the GOP in the 2002 elections. And then I quote: ''When an issue dominates the landscape like this one will dominate the landscape, I think through this election and probably for a long time to come, it puts Republicans on a very good footing.''

I thought: Well, perhaps that is a pollster. Perhaps pollsters are paid to say what is best regardless of what other considerations ought to be made. Pollsters are paid to tell you about the politics of issues. And were it left with pollsters, perhaps I would not be as concerned.

But then I read that Andy Card was asked: Well, why did this issue come before Washington and the country now? Why are we debating it in September? Where were we last year? Where were we last spring? And Mr. Card's answer was: ''From a marketing point of view, you don't introduce new products in August.''

New products? War?

And then I listen to reports of the Vice President. The Vice President comes to fundraisers, as he did just recently in Kansas. The headline written in the paper the next day about the speech he gave to that fundraiser was: CHENEY talks about war: electing Taff would aid war effort.

And then we find a diskette discovered in Lafayette Park, a computer diskette that was lost somewhere between a Republican strategy meeting in the White House and the White House.

Advice was given by Karl Rove, and the quote on the disk was: ''Focus on war.''

I guess, right from the beginning, I thought: Well, first it was pollsters, and then it was White House staff, and then it was the Vice President. And all along I was asked: Are you concerned about whether or not this war is politicized? And my answer, on every occasion, was: Yes. And then the followup question is: Is the White House politicizing the war? And I said: Without question, I can't bring myself to believe that it is. I can't believe any President or any administration would politicize the war. But then I read in the paper this morning, now even the President—the President is quoted in the Washington Post this morning as saying that the Democratic-controlled Senate is ''not interested in the security of the American people.''

Not interested in the security of the American people?

You tell Senator INOUYE he is not interested in the security of the American people. You tell those who fought in Vietnam and in World War II they are not interested in the security of the American people.

That is outrageous—outrageous.

The President ought to apologize to Senator INOUYE and every veteran who has fought in every war who is a Democrat in the Senate. He ought to apologize to the American people.

That is wrong. We ought not politicize this war. We ought not politicize the rhetoric about war and life and death.

I was in Normandy just last year. I have been in national cemeteries all over this country. And I have never seen anything but stars—the Star of David and crosses on those markers. I have never seen ''Republican'' and ''Democrat.''

This has to end, Mr. President. We have to get on with the business of our country. We have to rise to a higher level.

Our Founding Fathers would be embarrassed by what they are seeing going on right now.

We have to do better than this. Our standard of deportment ought to be better. Those who died gave their lives for better than what we are giving now.

So, Mr. President, it is not too late to end this politicization. It is not too late to forget the pollsters, forget the campaign fundraisers, forget making accusations about how interested in national security Democrats are; and let's get this job done right.

Let's rise to the occasion. That is what the American people are expecting. And we ought to give them no less.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I commend the distinguished Democratic leader for the position he has taken here today. I commend him for the restraint he has shown in his remarks.

I, too, was astounded upon reading this story in the Washington Post this morning. It reads as follows in part:

> As he seeks to boost Republican candidates in the midterm elections, President Bush is increasing his emphasis on terrorism and national security, shedding his previous determination to demonstrate his concern about the flagging economy.
>
> Four times in the past two days, Bush has suggested that democrats do not care about national security, saying on Monday that the Democratic-controlled Senate is ''not interested in the security of the American people.'' His remarks, intensifying a theme he introduced last month, were quickly seconded and disseminated by House Majority Whip Tom DeLay (R–Tex.).
>
> At a fundraiser for GOP House candidate Adam Taff in Kansas Monday, Vice President Cheney said security would be bolstered if Taff were to defeat Rep. Dennis Moore (D–Kan.). ''Cheney talks about Iraq at congressional fundraiser/Electing Taff would aid war effort,'' read the headline in the Topeka Capital-Journal.

Mr. President, are we to believe this? Are we to believe that this President said what I have just quoted? This is the President who was going to change the tone in Washington.

I am terribly disappointed. We are entering an election. War clouds loom over this country. Yet the President would say the Democratic-controlled Senate is ''not interested in the security of the American people.''

What about MAX CLELAND? Is he interested in the security of the American people? What about DANNY INOUYE? Is he interested in the security of the American people?

I am disgusted by the tenor of the war debate that has seemingly overtaken this capital city. Here is the President of the Senate, the Vice President of the United States, out campaigning. The President is campaigning using war talk to win the election. The Vice President of the United States is barnstorming for Republican candidates. There, in at least one instance, he was telling voters that electing Republicans would aid the war effort.

Is the President determined to make his party—that great party of Abraham Lincoln—the war party? What would Abraham Lincoln have to say if he were here?

This war strategy seems to have been hatched by political strategists intent on winning the midterm election at any cost, even if that cost places this Nation on the brink of battle and the Nation's sons and daughters there on that brink. It is despicable. The distinguished majority leader used the word ''outrageous.'' He is exactly right. It is despicable that any President would attempt to use the serious matter of impending war as a tool in a campaign war.

I am not going to continue to be silent. The blood of our sons and daughters, our soldiers, sailors, and airmen,

has far more value than a few votes in a ballot box.

There is nothing more sobering than a decision to go to war, but the administration has turned the decision into a bumper sticker election theme. That is what I felt I saw in the beginning of this war on terrorism. It was being used politically also. It is clear now. It is out in the open. There it is.

For the President to suggest the Senate is not interested in the security of the American people is outrageous. It is insulting. It is wrong, wrong, wrong. To suggest that one is unpatriotic simply because one is affiliated with a certain party and may oppose a war that may have horrendous consequences is irresponsible—irresponsible. It is the worst kind of political opportunism.

I have been in this Congress 50 years. I have never seen a President of the United States or a Vice President of the United States stoop to such low level. It is your blood, your sons and daughters. Those who are looking at the Senate through the electronic lenses, it is your blood, your treasure.

For the first time in the history of the Republic, the Nation is considering a preemptive strike against a sovereign state. I will not be silenced. I have no brief for Iraq, but I am not going to be silenced. I will not give the benefit of the doubt to the President. I will give the benefit of the doubt to the Constitution. I will give the benefit of the doubt to the American people who will soon be called upon, if this President has his way, to give their sons and daughters, the blood of this country.

I do not defend the Iraqi regime. I do not justify its actions. But I also do not want to commit our sons and daughters to battle without a thorough understanding and a thorough debate. You silence me, if you can. There are others in this body who are going to speak up for their people.

This administration is making the war their battle cry. That is their bumper sticker politics. They are putting it front and center. They don't want to talk about domestic issues. They don't want to talk about those things. So they choose to make the war center stage. OK.

''Lay on, McDuff. And damn'd be him that first cries, ''Hold, enough!'''

My people in West Virginia expect me to speak out. If the Lord lets me live, I shall do that.

I also do not want to commit our sons and daughters to battle without a thorough understanding of the motivations, the strategies, the repercussions of that battle.

America fights wars, but America does not begin wars. This is my battle cry. This is yours. Each of you has sworn to support and defend the Constitution of the United States against all enemies foreign and domestic. There it is. That doesn't give this President, that doesn't give this Nation, a right to launch an unprovoked attack on a sovereign nation. America fights wars, but America does not start wars.

The American people have serious questions. The Nation's allies have serious questions. Members of this body have serious questions. These must be answered before going to war, and it is not now, nor was it ever, unpatriotic to ask questions.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. The majority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that Senator INOUYE have 5 minutes of my leader time.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, I certainly do not object to any time Senator INOUYE wants, but we have come to debate an amendment on the homeland security bill, and I would like to have an opportunity to speak on it. I do not object.

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

Senator INOUYE.

Mr. INOUYE. Mr. President, the gentleman who resides at 1600 Pennsylvania Avenue is the President of the United States of America, and although the Constitution does not specifically state it, his most important chore is to keep our people united, to keep our Nation united.

Accordingly, this morning I am saddened by the reports of my leader, the majority leader, and my leader, Senator BYRD of West Virginia, because it appears that our administration and our President are making statements that only serve to divide our people.

I have been honored to serve as chairman of the Defense Appropriations Subcommittee. Four weeks ago, this subcommittee reported a bill unanimously. It is a Democratically controlled subcommittee, but it reported a measure unanimously. It went to the full committee, chaired by the Senator from West Virginia, and the committee reported that measure unanimously. It was reported to this floor, and by an almost unanimous vote—three Members had questions—it passed the Senate. That was 4 weeks ago. That was carried out by a Democratically controlled Senate.

There are a few footnotes in history that I think we should recall. I listened to all the talk shows on Sunday. I am a good listener. I very seldom speak on the floor. One statement was made that some of us in the early 1990s questioned the war in the Persian Gulf. I was one of those. This spokesperson said: They questioned the war because they said a lot of body bags would be returning, and just a few returned. But we should recall that the war ended at the border of Iraq. If we had gone into Baghdad, we would have had many body bags, unless the United States had decided to do the most inhuman thing and wipe out Baghdad—men, women, and children.

Some have now suggested: The war in Afghanistan has resulted in 100 casualties. That is not a war.

There is another footnote in history that we should recall. In that ancient war we engaged in 60 years ago, World War II, in the U.S. Army, 95 percent of the men in uniform had no spouses; there were no children. Five percent had spouses and children. In my regiment, 4 percent had spouses and children; 96 percent were young men, 18, 19, 20. We were ready. We had no strings attached.

Today, in the U.S. Army, over 77 percent of our men and women have spouses; they have children. We should be concerned about their sensitivities.

It is not easy going into combat. No one enters battle planning to become a hero. You just happen to be in the wrong place at the wrong time. If you stepped one foot to the right, the bullet would have missed you.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senator may have 5 additional minutes.

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

Mr. INOUYE. Mr. President, there are those who plan war, and there are those who engage in war. As we have always said in the subcommittee and in the Appropriations Committee, in order to avoid war, we should be prepared for war. We voted for a bill to spend over $356 billion. Does that suggest we are not concerned about the security of our people? And when we passed it unanimously—bipartisan, united—does that suggest we are not concerned about the security of this country?

I am concerned about the security of this country. I am concerned about what history will say about this Nation 50 years from now. Did we brutalize people or did we carry on ourselves as a civilized people? As my leader from West Virginia stated, to attack a nation that has not attacked us will go down in history as something of which we should not be proud.

Mr. President, I can assure you that this Democratically controlled Senate, and especially the Defense Appropriations Subcommittee, will support the President of the United States because that man is my President also. Certainly, I did not vote for him, but he is my President, and it grieves me when my President makes statements that divide this Nation.

I can assure you this is not a time for Democrats and Republicans to say I have more medals than you, and I have lost more limbs than you, and we have shed more blood than you. This is not the time for that. This is a time in which we should be working together, debating this issue. As the Senator from West Virginia said, it is American to question the President. It is American to debate the issues. I stand before you as a proud member of the Democratically controlled Senate.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. KERRY. Will the Senator from Texas yield?

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Texas has been recognized. The Senator controls 1 hour.

Mr. KERRY. Madam President, I ask if the Senator from Texas will allow me to speak about 5 minutes before he begins.

Mr. GRAMM. Madam President, the pending business is homeland security. I came over to offer an amendment with the Senator from Georgia. The majority leader has made a statement. The distinguished President pro tempore of the Senate has made a statement.

Our distinguished and beloved colleague from Hawaii has made a statement, and we are here to debate a war which we have an opportunity to do something about now. We are here to debate an issue where we have an opportunity to prevent anybody's blood from being spilled by having an effective homeland security program, and I want to exercise my right to speak on that issue.

I want to be brief on the subject, but accusing a President of starting a war for political reasons is a pretty serious accusation. This Senate, on several occasions, has passed resolutions that in the strongest terms called on the President, if he so decided, to use force against Iraq.

The United Nations has passed resolution after resolution that Saddam Hussein has rejected. So the idea that somehow this is a new problem and has suddenly been created out of whole cloth as we face the election simply will not bear up to scrutiny.

Secondly, there has been a confusion between two wars, and I think this is a very important issue. In listening to all of those quotes, most of what has been said has had to do with a force resolution which we are not debating today, which we will be debating next week or the week after.

As Jefferson said so long ago, good men with the same facts are prone to disagree. Based on our history in dealing with Saddam Hussein, based on the threat he poses, based on the new information on that threat which was made available by the British Intelligence Service and by the Prime Minister in today's paper, I reach a totally different conclusion than many of my Democrat colleagues in that I believe the President should be supported, and I believe a resolution of that support should pass in the Senate.

As clearly as I can say, I think internationalism is important, I think the United Nations has a role, but when we are talking about the lives and safety of Americans, I am not going to turn those lives and that safety over to the U.N.

As much as I love our allies, especially the British, I am not going to turn those lives and that safety over to our allies either. When we are talking about American lives, the buck stops with us. No matter what the United Nations decides, we are never, ever, under any circumstances, going to delegate to the United Nations the protection of American lives.

Hopefully, the United Nations is going to come to their senses and support the President, but the idea that we ought to change this resolution, when we do debate it, to say we should work within the U.N. I am not willing to put American lives at risk based on what the U.N. may or may not do.

A final point, in response to the debate we just had, we have a commingling of two different wars. The first war is with Iraq, and we are going to debate that in 2 weeks. Everybody will have a chance to state their position. I wanted to make mine clear today. The second war, however, is the war on terrorism. That is the war we are fighting today. That is the debate we are having today.

When we started this debate as to giving the President the power to protect America from the horror we saw on September 11, it never crossed my mind we would end up with a Senate that was almost perfectly divided, where Republicans were on one side and Democrats, in the preponderance, were on the other.

There is one exception, apparently, on each side at the moment. I have not looked into people's hearts. We have not had a vote. I do not know where people are down to the individual Senator, but it certainly appears at the moment that we find ourselves in the extraordinary circumstance that we are almost perfectly divided along party lines over the issue of giving the President the power he has asked for to defend the American homeland and to defend our people.

Maybe this should not be a partisan issue, but if one defines a partisan issue as an issue that ends up being split along party lines then by that definition the debate we are engaged in right now, has become divided along partisan lines. The point I want to be sure people understand is the last statement quoted by the President was not about Iraq. It was about defending the American homeland.

Why has this become a political issue? I do not believe Iraq is going to be a political issue, despite the fact some of our colleagues today have expressed reservations about Iraq. I believe in the end the President is going to get a much stronger vote on a force resolution on Iraq today than we got in 1991. In the end, I do not believe Iraq is going to be a partisan political issue.

Why has homeland security divided the Senate right down the middle along partisan lines? The reason is, it involves a very tough choice. Government is about making tough choices. When one gets outside the civics class, it is not about black and white, right and wrong. It is about tough choices. It is about give and take. It is about giving up some things to have others. In fact, this whole idea that everything can be broken down into all positive and all negative completely misrepresents the reality of the world.

There seems to be no objection to taking all of these Government agencies and putting them into one agency. So far as I know, 100 Senators are willing to do that. But remarkably, roughly half the Members of the Senate seem intent on taking away emergency powers the President had on September 11, but that would be taken away by the Lieberman bill that is before us.

I wonder how many Americans who are listening to this debate understand the proposal made by Senator LIEBERMAN, on behalf of the vast majority of Democrats, would actually weaken the President's ability to use national security powers to protect America. I do not think people understand that.

Our Nation has been attacked. Thousands of our citizens have been killed. The lives of countless thousands have been altered forever. We are debating homeland security. We have a proposal before the Senate that says we want to take powers away from President Bush, powers that President Clinton had, that Bush 41 had, that President Reagan had, that President Carter had, and powers they used.

Now, why are we debating such a proposal? How could it possibly make any sense that we were perfectly content to give every President since President Carter the ability to declare a national emergency and set aside business as usual in the Federal bureaucracy to respond to an emergency? But suddenly, as we are creating this Department, the majority proposes we take these powers away from President Bush.

In other words, we will put everybody in the Department, but the price the President would have to pay is less ability to use emergency powers than four of his predecessors have had. The President has rejected that. Does anyone blame him? Can anybody believe that any President, especially this President, would sit idly by while the Congress takes away powers that his four predecessors had?

I don't think anybody would think that is realistic. Why are we doing it? Why is the Senate almost evenly divided along partisan lines on this issue? The reason is, we are down to a tough choice. The tough choice is the following: To give the President the power to put the right person in the right place at the right time to do the right job in protecting lives, we have to change the way the Government operates. But there are powerful political interests that are opposed to making that change. And there are people who are committed to that system, the system we call the civil service system.

I remind my colleagues we have had study after study after study, studies headed by Paul Volcker, appointed by President Clinton to be head of the Federal Reserve bank. We have had studies by Lee Hamilton, a Democrat in the House, and Warren Rudman, our

beloved colleague from the Senate. In study after study concerning national security, they have concluded the following, and this is the Volcker Commission: ''The current system is slow. It is legally trammeled and intellectually confused. It is impossible to explain to potential candidates. It is almost certainly not fulfilling the spirit of our mandate to hire the most meritorious candidates.''

That is not President Bush talking. That is not Senator GRAMM talking. That is Paul Volcker talking. The Rudman-Hamilton bipartisan commission on national security concluded that we needed an agile, flexible personnel system. And then they wrote: ''Today's civil service has become a drag on our national security. The morass of rules, regulation, and bureaucracy prevent the Government from hiring and retaining the workforce that is required to combat the threats of the future.''

What the President has proposed is that he have the ability to streamline the process, and when it comes to a choice between national security and the status quo in the Government system, the status quo must yield. When it comes down to union work rules, business as usual, or the life and safety of our citizens, the President says that the system has to yield. Civil service rights are important, but they are not as important as the right of Americans to life and freedom. When our people's lives are at stake, business as usual in Washington has to yield.

The substitute that Senator MILLER and I have offered prohibits the ability to discriminate on the basis of race, color, creed, national origin, and arbitrary and capricious factors, but allows the President the flexibility to hire without waiting 6 months, to fire without waiting 18 months, to eliminate a system where 99 percent of Government employees get pay raises whether they received good evaluations or not.

I am not saying one side is right and one side is wrong. Obviously, I believe the President is right, and I believe my Democrat colleagues, other than Senator MILLER—and maybe some I don't know about—are wrong. Obviously, I believe that or I would not be standing up here. My opinion does not make their position morally inferior to my position. The division is about what is more important.

That is what the division is about. You have powerful concerns on both sides. You have the concern of national security and you have the concern of Government employees, one of the most powerful political constituencies in America.

I am not saying they are wrong and we are right. I am saying we disagree and we disagree almost perfectly along party lines and we have to make a choice. You cannot be for the primacy of existing work rules of the Federal Government and be for the primacy of national security. You have to make a decision.

I have made my choice. My choice is, when Government work rules impede the protection of American lives, they have to yield. That is my choice. Many of my colleagues appear to have made a different choice.

What are we talking about when we are talking about changing union work rules? I have heard over and over and over again that we are eliminating merit and unions.

First, the substitute Senator MILLER and I have introduced is a substitute which strictly constrains the President to make decisions based on merit, and it limits it strictly to those areas where lives are at stake. I will give some concrete examples. In 1987, the Customs Service at Logan Airport in Boston tried to change the inspection facility to make it safer and more efficient. But there was a union work rule that said the inspection facility could not be changed in any significant way without a renegotiation of the union contract. So guess what. The Treasury employee labor union went to the FLRA and they overruled Customs. And Customs was not able to change the inspection facility.

Look, maybe when you are talking about trying to keep drugs out of the country or illegal aliens, those work rules are more important. But when you are talking about lives, are they more important? If we can increase the probability of keeping chemical or biological or nuclear weapons from coming in through an airport in America by changing the inspection facility, are we supposed to wait around 18 months to negotiate with the union about the ability to change the room in which the workers are working? Some of our colleagues think so, but I do not think so. I do not believe the American people think so.

Let me give another example. You all remember Barry McCaffrey, the general who was appointed by President Clinton to be drug czar. He made note in the San Francisco Examiner about the different work rules of the different Government agencies that were protecting America's borders:

> Officials at one agency were actually forbidden to open the trunks of cars, a policy well known to drug dealers.

Look, maybe it makes sense to some people that a union work rule says people working for this agency or in this classification can not open a trunk at a border inspection, and so dope gets into the country or an illegal alien gets into the country. But if it is a nuclear weapon, does it make sense? Do we really think preserving that work rule that General McCaffrey pointed out was being gamed by drug dealers—do we really believe that is more important than keeping a nuclear weapon from getting into the United States?

That is the issue we are debating. I could go down the list and go on and on. In terms of deployment of the Border Patrol special task forces, the union work rule says you cannot deploy somebody where there is not a barber shop, a place of worship, or a dry cleaners. If we are just trying to keep dope out of the country, or keep out illegal aliens, maybe that is not so unreasonable. I do not agree with that, but maybe I am wrong.

But when you are trying to keep weapons of mass destruction that can kill thousands of our people out of the country, do we really want to go to the FLRA and spend months and months and months trying to renegotiate this? Or do we want to give the President the power to say: Lives are at stake. As long as that is the case, under the emergency powers as President I am going to send the Border Patrol where there is no dry cleaner.

That is what we are talking about. That is what this issue is about—the ability to deploy on merit, when lives are at stake, instead of seniority. We are talking about the ability of agencies to set gun policies—something today they cannot do because of union work rules—and search policies. When we are worried about drugs getting into the country or contraband of various kinds, maybe we want to say the union work rules are more important than the search policy. So you have to go to FLRA to renegotiate with the union and spend 18 months doing it. But if lives are at stake, and we are talking about a nuclear weapon getting into New York Harbor, surely people see the difference. These are the kinds of things we are talking about.

Let me try to sum up where we are and what the issue is. We are divided almost perfectly along partisan lines with the exception of one Member on each side. Is preserving this old horse-and-buggy system from the 1950s—that was designed primarily to protect workers, not to get the job done—more important than enhancing the probability that we can protect lives? I say no. Some others say yes. That is the issue.

It ends up being contentious because we cannot have it both ways. You can't serve two masters. You have to make a choice, and the choice I choose is national security.

Madam President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 27 minutes.

Mr. GRAMM. Madam President, I ask for 10 minutes off the leader time.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. GRAMM. This time would not count toward our hour.

Madam President, Senator MILLER and I have spent 4 weeks listening and participating in this debate. We have looked at the House bill, a bill that the President says he would sign. We have looked at the President's proposal, a bill the President would sign. And we have looked at the bill before us, a bill the President has said he would veto. I do not know how we promote homeland security by giving the President a bill he would veto.

We have made some 25 changes in the President's proposal. Quite frankly, the

President has compromised more than I would have compromised had I been in his position. But the President wants to try to work on a bipartisan basis, and he wants this bill because lives are at stake.

We have limited, very narrowly limited, the President's power to use his emergency waiver in civil service. We have limited it by setting out parameters which he cannot violate in terms of his personnel flexibility. We have adopted some 95 percent of the Lieberman bill. We have adopted provisions of the House bill that represented bipartisan consensus. And we have talked to some 25 Members of the Senate and we have adopted some 18 measures that have been influenced by Members. The President has said this is as far as he can go.

What does that mean? Is it as far as he can go because he is mad about something? Is it as far as he can go because he is tired of the Democrats being successful, the Democrat leadership being successful in stopping him from doing what he wants? No. The President has said this is as far as he can go because he does not believe that he can effectively do the job if he gives up any more power. He doesn't believe if he gives up more power that he is getting the tools he needs to fight and win the war on terrorism. And I agree with him. I think he is right.

What are the issues we come to? The biggest issue we come down to is the issue I have already talked about at great lengths, and that is the issue of letting the President keep the powers that every President since Jimmy Carter has had. The Lieberman bill takes away power to declare a national emergency and to take extraordinary action that President Carter had, that President Reagan had, that President Bush had, and that President Clinton had. The President has said he is not going to let power that he had on September 11 be taken away in a bill that is supposed to be responding to September 11.

Interestingly enough, the President has offered a compromise where he will do things that President Clinton did not have to do when he used that power. He will have to notify Congress in advance, he will have to make public a declaration as to why he did what he did and his justification, something that President Clinton did not have to do. That is how much our President wants to get this job done. But has that been met by reasonable compromise on the other side? No.

We have a bill before us that takes that power away from the President. That is not going to happen. It is just not going to happen. We are not going to let it happen. The world may come to an end, but we are not going to take powers away from this President that four other Presidents have had when we are trying to fight and win a war on terrorism. It is just not going to happen.

The idea that it should be asked for is an idea that I would hate to have to defend. I would hate to have to go back to Mexia and stand up in front of the print shop of my dear friend Dicky Flatt and explain to people that we are going to take some of power the President has to protect us and we are going to do it in a bill that is supposed to be responding to the death of thousands of our citizens in Washington and New York.

Maybe you can make that sale in Mexia. But I cannot. I am not that good at it. I am talking about political ability. I could not make that sale, and I don't believe anybody else can make that sale in Mexia. Maybe they can make that somewhere else. I don't think they can make that sale in Young and Harris Counties, either.

But that is the first issue. What we have gotten from our colleagues on the other side of this issue is a series of proposals that all boil down to one thing: The power of the unions, and the power of doing it the same old way it has been done since the 1950s will be preserved, and the power of the President in the name of national security will be reduced.

That is the first major issue where we are at an impasse. We have language now that was written by the Public Employee Labor Union. It was offered in the House. It was rejected in the House. Yet that is being proposed once again. The answer is no. I don't know what part of that old country and western song they do not understand, What part of ''no'' don't you understand? But the answer is no.

The second issue is: When lives are on the line, should the President have the ability to hire people and have the flexibility to do it without waiting 6 months? Should he have the power if somebody comes to work drunk in a national security department to fire him without having to go through 18 months of rigmarole? I think the answer is yes. I think the answer is yes. But, obviously, the people on the other side of this issue think the answer is no.

Those are the two issues. You might say this is a great big, old, thick bill, and you sent a great big, old, thick amendment.

Let me make it clear. I sent that amendment for myself, for Senator MILLER, for Senator THOMPSON, for the President, and for some 40 Members of the Senate. That was our best effort at a real compromise where the President gave up powers he really, honestly to God, believes he needs. But he did it to try to solve this problem and to get this Department established and to get on with defending national security.

The terrorists are not waiting for this debate. I don't know what they are doing. But it scares me.

When you look at these great big, thick bills, we are really apart only on two issues. What should come first? Business as usual, or national security? And should the President have the power when lives are at stake to hire, to promote, and to operate in the most efficient manner possible this part of the Federal Government when the goal is to protect the lives and safety of our people? That, I think, is the choice.

Final point: Senator MILLER and I have worked hard with the White House for 4 weeks to provide what we believe is a compromise. It is the first real compromise that has been proposed, in my opinion. We want a vote on it. There is going to be an effort later by people on the other side of the issue to defy us that vote by amending our bill in these two critical areas so we never get an up-or-down vote on the President's program.

I am not crying foul by saying it is against the Senate rules to do that. I am not saying it is wrong to do it in terms of the way the Senate operates. I am saying I think the President deserves an up-or-down vote on his program. If you want to vote no, you have the right to vote no. But don't you think we ought to let the President have an opportunity to have his program voted on in the way he would like to see it voted on?

When that amendment is offered, we are going to use our rights under the Senate rules to hold out for a vote on our substitute. I believe in the end we will get it. I am sure some people on the other side of the aisle will stand up and say, you are delaying, you are delaying, you are doing this, you are doing that.

All we want is to vote. We have about 40 Members of the Senate who want to speak on it. They want to be heard. They will be heard. But, in the end, the President is going to be heard. In the end, the people are going to be heard. We want an up-or-down vote on the President's program.

I hope we are going to win. If we don't win, then we are going to be in a situation of trying to pass a bill the President will veto, and maybe we will have to wait until after the election and try again. That will mean that for 3 months we are not going to have the program in effect to protect national security. I think that is a risk. As a result, I want us to pass a bill.

I don't think any Member of the Senate can stand up and say they wanted to talk about this issue but Senator MILLER, Senator THOMPSON, or I have not been willing to try to work this thing out. But so far, we have seen no effort to work it out. So far it has been that we are going to take power away from the President, and if you don't like it, that is all right. Well, we don't like it, and it is not all right. It is not going to happen.

Ultimately, the debate ends here and the public has to make a decision. Is this a partisan issue? God knows that it should not be partisan. But, if you define partisan as being divided roughly along party lines, it is a partisan issue. It shouldn't be. I don't want it to be. There are many people on the other side of the aisle who don't want it to be, but it is.

In saying that, it is simply telling the truth. It is a terrible indictment of

us, a terrible indictment of the Senate, but it is telling the truth.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, I yield to the Senator from Illinois such time as he requires.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Madam President. And I thank the chairman of the Governmental Affairs Committee, Senator LIEBERMAN.

Let me say for the record, this bill—the creation of a Department of Homeland Security—is a bill that has had two births.

It was first born in our committee under Senator LIEBERMAN's leadership before President Bush proposed its creation. We worked for the creation of this Department—believing the concept was sound—to bring together, in reorganization, agencies that are necessary to protect America.

When we had a vote in the Governmental Affairs Committee on Senator LIEBERMAN's proposal, I was happy to support it, but not a single Republican member of the committee supported it.

Not 2 weeks later, President Bush came forward and said: I now support a Department of Homeland Security. And Senator LIEBERMAN said: We will work with you. Let us put together a plan to bring it forward in a bipartisan fashion because, harkening back to an earlier statement on this floor: There is no partisanship when it comes to protecting America or its security or its freedom.

Senator LIEBERMAN, working with Senator THOMPSON, tried to bring out a bill, a bipartisan bill, to address the President's concern about a Department of Homeland Security. I think we have done a good job. I think we have brought this bill to the floor in good faith. We had a lengthy hearing, many witnesses. Amendments were considered; some adopted and some rejected. The orderly process of Congress was followed. My hat is off to Senator LIEBERMAN for his leadership.

But to think we have spent 4 straight weeks on the floor of this Senate unable to bring this bill to closure is clear evidence that there are people on this floor who do not want to see this bill passed in any form.

When the Senator from Texas comes up and says: Well, you have to understand, we are going to bring an amendment, and a few of our colleagues would like to speak on it on the floor, perhaps 40 Senators would like to speak on it on the floor—well, be prepared, that just means a filibuster by another name.

It means, frankly, there are forces at work on this floor that do not want to see this bill passed. They want to drag it out not 4 weeks or 6 weeks but 8 weeks and beyond. They have some other agenda other than giving the President a Department of Homeland Security. That is unfortunate.

I think Senator LIEBERMAN and the members of the committee have shown good faith from the start. We have come to the floor day after weary day, many times with absolutely nothing happening, except the threat of another filibuster. And here we stand. Here we stand this day without the Department of Homeland Security bill passing the Senate. I think it is unfortunate. I think it is sad.

Earlier, the Senator from Texas said: Now, some of those who spoke earlier, such as Senator DASCHLE, Senator BYRD, and Senator INOUYE, about their concern over the President's statements that raised a question as to whether the Democrat-controlled Senate was, in fact, committed to the security of America—the Senator from Texas said: Understand, he was not referring to the war on Iraq. He was only referring to this bill, the Department of Homeland Security.

Well, I am glad the Senator from Texas made the distinction. But it does not allay my fears that what we have emerging is partisanship when it comes to the security of America and the rhetoric that is coming out of the campaign forces, the campaign machine of the White House. It is no comfort to me to be told: Oh, they are just questioning your patriotism when it comes to the war on terrorism, not on the war on Iraq. I am sorry, that is unacceptable.

When September 11 occurred last year, President Bush did not even have to make the appeal to Congress. Within hours, Congress came together on a bipartisan basis. We came together and not only sang ''God Bless America,'' we also came together, within a few days, to give this President the authority and resources he needed to wage the war on terrorism.

There was never any question that this Nation would stand together—Democrats, Republicans, and Independents—and we did, as did Capitol Hill. We have stood with this President.

For those who are trying to fire up the campaign rhetoric for this coming election, questioning the patriotism of anyone in the Senate who would even offer an amendment to the Department of Homeland Security bill goes too far. Whether this questioning of patriotism is over the war on terrorism or the war on Iraq, it is entirely inappropriate. It is an afront to the many veterans in this Senate on both sides. It is an afront to many of us who believe this country is something we hold dear, and who try, in every single vote we cast, to keep that in mind.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield to the Senator for a question.

Mr. REID. Did the Senator hear the statement of Senator DASCHLE, the majority leader, today?

Mr. DURBIN. Yes, I did.

Mr. REID. Did the Senator hear the statement of the Presidential pollster, and also that of Karl Rove? And did the Senator hear, as I did, the direct quotes that they wanted a strategy for the campaigns that dealt with the war? Did the Senator hear that?

Mr. DURBIN. Yes, I did.

Mr. REID. That didn't seem to say anything about homeland security, did it?

Mr. DURBIN. Not a bit. It suggested to me, I say to the Senator from Nevada, coming back to this bill, when we go to the merits of this debate, let's be very honest about what this concerns.

This is a question about moving some 150,000 or 170,000 employees of the Federal Government under a new roof called the Department of Homeland Security. I support it. I supported it when Senator LIEBERMAN offered it. I supported it when the President suggested it. I still support it.

But the question before us today is, for 40,000 or 50,000 of these employees, when they come under that new roof, will they bring with them collective bargaining rights that they have had, have earned, have worked for, perhaps, all of their adult lives?

There are those who argue—and you have heard it from the Senator from Texas—once they come into this new Department, we can't afford to run the risk that someone who belongs to a labor union can really rise to the challenge of defending America.

Pardon me, Madam President. Do I recall correctly those profiles in courage of September 11, 2001, of which so many of us are so proud? Did you stop and think for a moment that those New York firefighters, going up those stairs in those burning buildings to rescue people did not know—complete strangers—doing their duty to their country, meeting the duty of their profession—did we stop and reflect, for a moment, that they were carrying, perhaps in their wallet, next to the picture of their family, a union card? Did anyone question their patriotism, their loyalty to our country, their devotion to so many people?

Oh, and yet today we hear speech after speech: We just can't run the risk of letting people who are members of labor unions in this situation, public employees——

Mr. GRAMM. Will the Senator yield? If the Senator is going to quote me, he ought to do it accurately.

Mr. DURBIN. Madam President, I ask that order be restored in the Senate.

The PRESIDING OFFICER. The Senator from Illinois has the floor.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I yield to the Senator from Nevada for a question.

Mr. REID. The Senator would agree, would he not, that the debate over this labor issue is one that we should have, and it has nothing to do with patriotism? I see on the floor one of the sponsors of the amendment, the Senator from Georgia, who is a distinguished American. He has written a book about the Marine Corps. No one can question his patriotism, his qualifications.

Wouldn't you agree a debate on labor-management relations is something we should have, and it has nothing to do with patriotism?

I have listened to the Senator from Georgia and how strongly he feels about Federal employees, and how we have to change, in his opinion, the way employees are treated. But that is an issue, would the Senator agree, that has nothing to do with patriotism?

Mr. DURBIN. I agree completely with the Senator from Nevada. For the Vice President, the President, or their campaign advisers to suggest that if we disagree on a labor-management issue in this new Department, we really are not committed to the freedom and security of America goes way too far. And I am afraid that is the point that was raised on the floor today and needs to be revisited.

I will yield to the Senator from Texas, if he has a question.

Mr. GRAMM. Yes. The only point I was going to make is, never in my remarks did I say anything about people being a member of a union. And if I am going to be quoted—and I like to be quoted; and I think it improves the Senator's speech to quote me—I would like him to do it accurately.

I never said anything about a member of a union. I simply said that when you have work rules that prevent you from deploying more patrol agents where there is no laundry, or where you are not able to change an inspection room without renegotiating a union contract, and lives are at stake, there needs to be some give. That is all I said. I did not say anything about joining a union or never mentioned a union in terms of the right of people to belong to it or their union membership or lack thereof having any relevance to do with this whatsoever.

Mr. DURBIN. I thank the Senator from Texas, but that is a distinction without a difference. To say, on one hand, I am not against labor unions, I am just against collective bargaining rights, is to get to the heart of the issue.

Let me give you an illustration that makes my point.

After September 11, 2001, we discovered that most of the terrorists responsible for the World Trade Center were coming over the northern border of the United States from Canada. We said that we were going to beef up efforts at the border to check people coming in so that others did not come in to threaten the United States. This administration said it. The Border Patrol said it. And do you know what. We did not do it. Two Border Patrol agents came forward and testified before a committee of Congress that it was all talk, we weren't putting the resources and the manpower in the right place to protect America after September 11, 2001.

These were Federal employees, members of labor unions with collective bargaining rights. Do you know what happened to them, I ask the Senator from Texas? Do you have any idea? They were fired from their jobs for testifying before Congress, terminated from their employment. Of course, there was a hearing because they had collective bargaining rights, and these whistleblowers were restored to their positions.

If we are going to talk about what is at stake, let me tell you this.

Mr. GRAMM. Will the Senator yield on that?

Mr. DURBIN. I will after I have made my point. The point I am making at this juncture is that collective bargaining rights make a difference. It is not a question about how bright the light is over the coffee pot for the employees taking their break and what color uniforms they are wearing. That is, I am afraid, a ridiculous extreme when we look at collective bargaining rights. It is the right of an individual employee at our Border Patrol to be able to stand before a committee of Congress and say: I don't care what my boss is telling you; I don't care what they are saying in their press release; they are not doing the job to protect America.

For these Border Patrol agents to stand up and tell us the truth under oath before a committee of Congress should not be grounds for termination. But they were. Thank goodness they had collective bargaining rights and their jobs were restored. I don't believe being a member of a labor union automatically qualifies you to be ready to fight for our Nation's security and be involved in intelligence gathering, but it certainly does not disqualify you. There are good, loyal, patriotic Americans who have collective bargaining rights.

Make no mistake, the bill reported to the Senate gives this President the authority, which he needs; if any individual employee, because of their new job assignments or because of the sensitivity of their assignments, needs to be removed from a bargaining unit, there is a way to do it, a legitimate, honest way. That is the point we are debating. To suggest that that has something to do with love of America and patriotism—I don't see it.

What we have before us and what concerns the Senator from Texas is, we have a bipartisan group that has come together and said: We have come up with a compromise. Let's deal with it.

As Senator Bumpers of Arkansas used to say: The Senator from Texas hates this bipartisan compromise like the devil hates holy water. He is afraid if we bring this to the floor and get a vote supporting the bipartisan position, all of his arguments and the President's arguments are weakened and disappear. That is what concerns him about this process and why he is promising 40 Senators who will speak interminably and drag this bill on for another 4 weeks.

If the President needs a Department of Homeland Security—and I believe he does—let's have this up-or-down vote. Let's decide where the will of the Senate is going. Don't be afraid of the will of Senate. Don't be afraid of the will of the people. Don't be afraid to say that collective bargaining does not disqualify people from defending America and from serving their Nation proudly.

Many of the people in these agencies are veterans who have served this Nation with pride and have risked their lives for the flag. To say as they come to a new Department that they somehow have to give up their rights to collective bargaining is unfair.

It has been said that it takes up to a year to fire an employee under civil service. That is a total myth. During their first year, employees can be terminated without notice, and 36 percent of new employees were removed during their probationary period in the year 2001. Any employee can be terminated with 30 days' notice.

Incidentally, in fiscal year 2000, it was said that out of 1.8 million Federal employees, only 6 were fired because they were found incapable of doing their job; and in 2001, only 3 out of 1.8 million were fired. These statistics grossly underestimate the number of Federal employees fired each year. The Republican claim that only three people were fired in 2001 refers to the three employees who were immediately removed for national security reasons only. In fiscal year 2001, 8,920 Federal employees were terminated and removed for disciplinary reasons.

The fact is, under civil service, employees can be removed. The fact is, under the bill that came out of the Governmental Affairs Committee, there is a procedure in national security for the President to make that determination. That is an issue.

I respect the Senator from Texas and the Senator from Georgia for what they are bringing as a substitute measure. Let me tell you this: They are leaving out some very critical elements of the bill brought out of the Governmental Affairs Committee.

After September 11 of last year, I focused on one particular issue that troubled me. I learned in the months leading up to it of the gross inadequacy of the information technology of the agencies of our Government relating to law enforcement and intelligence, the FBI being the classic example of an agency dealing with the most primitive technology.

I have worked for over a year to try to bring modernization of computers and information technology into intelligence gathering and law enforcement. I have spoken to everyone—Attorney General Ashcroft, FBI Director Mueller, the Vice President, as well as the President of the United States—about what I consider to be one of the glaring examples of our inability to deal with terrorism.

As a result, I prepared and offered an amendment which was on the Governmental Affairs bill that came to the floor and is still pending today. This amendment establishes that at the

Federal Government level, we will start blending together the computer architecture of different agencies of the Federal Government so that they are not only modern but they are interoperable, so they can communicate with one another, pass information along. If the FBI has a most wanted list or danger list, they can pass that along to the Federal Aviation Administration and the Immigration and Naturalization Service.

I am sorry to report that does not exist today. I worked long and hard on this amendment. It had the support of all of my colleagues on the Governmental Affairs Committee. They believe, as I do, that this is a critical element in the defense of America.

But the substitute amendment being offered by the Senator from Texas doesn't include this provision. They have decided it is unnecessary, or at least they have not addressed it. I sincerely hope they will at least reconsider that if we do bring this forward and this substitute becomes the bill we are going to amend, they could introduce a motion of cloture, for example, raise germaneness questions.

If we don't include it, some element of information technology in a Department of Homeland Security, we are fooling ourselves. We are saying we are creating a new Department that has a brandnew nameplate on the door with 170,000 employees but with computers that are inadequate to the job.

When I spoke to Gov. Tom Ridge about this amendment, he said: I support this. It is a force multiplier. That means it takes the existing resources of our Government and makes them that much more effective in fighting terrorism.

The substitute offered by the Senator from Texas does not include that. That is sad.

Frankly, it may be a political victory for his substitute to prevail, but it will not be a victory in the war against terrorism. We should put the weapons in place, the arsenal we need to protect America on a bipartisan basis, looking not only to employees of the Department but also the resources and technology available in the Department.

It has been made clear on this floor that when it comes to the security of the Nation, there should not be any partisanship whatsoever. We can stand here as Americans and Members of the Senate and debate the provisions of this bill and others, and no one should call into question our patriotism.

There is no reason we should take the roles and lives of 40,000 or 50,000 new employees of this Department and say it is basically going to be impossible for them to serve their Nation and to have their rights as employees respected. We can do both. They have already proven we can do both. To try to eliminate their rights to collective bargaining or to reduce them dramatically to a point where they are meaningless is unfair to the men and women who have served us so well in so many different ways, who are proud to have these collective bargaining rights and be members of labor unions.

Before we adopt this substitute, consider the elements it does not include. One of the elements is the fact that it does not deal with the information technology that is essential to fighting a war on terrorism in the 21st century. Their bill is silent on what I consider to be one of the most important elements of this war and one of the most important weapons we can use to bring it to a successful conclusion.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, I yield myself a moment or two or as much time as I require. I will yield in a moment so Senator MILLER may speak.

While he was on the floor, I wanted to thank Senator DURBIN for the substantial contribution he made to the committee's proposal for a Department of Homeland Security overall and the specific, unique, very valuable proposal he made regarding information technology.

This is really a key to all sorts of activities in our world today, including homeland security; the ability to interconnect levels of our government, different agencies that will be part of the new Department and Federal, State, county, and local governments. I appreciate it.

Senator GRAMM and I have had discussions, and at some point, as the most controversial parts of this discussion work their way to either an agreement or the Senate works its will, I hope we can sit and talk about sections of our committee bill, such as Senator DURBIN's, which are not partisan; they are good Government, with a capital G, good. We ought to be able to reach a bipartisan agreement to include that in whatever Department of Homeland Security we create.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. GRAMM. Madam President, will the Senator yield for 2 minutes? I do not want the Senator to lose the floor.

Mr. MILLER. I yield.

Mr. GRAMM. Madam President, I would like to make a couple responses. First, let me give you the actual figures of people being fired from the Federal Government. There are 1.8 million people on the Federal payroll. In the year 2001, three of them were fired outright. The previous administration, the Clinton administration, found that 64,340 Federal workers were poor performers.

Mr. DURBIN. Will the Senator yield for a question?

Mr. GRAMM. Let me finish my point. Only 434 of them went through the removal process, and that process takes as long as 18 months, and many of them remained on the payroll. That is the first point.

The second point, the Senator talks about INS. In 1990, at the Honolulu Airport, the Immigration and Naturalization Service was worried about a surge in flights and the long lines, and they wanted to hire more INS agents to enforce the law.

The American Federation of Government Employees filed a complaint with the National Labor Relations Board saying, under their contract, INS could not hire more agents without renegotiating its union contract. Guess what. The National Labor Relations Board ruled in favor of the union, prohibiting the people from being hired.

The Senator talks about a vote. I ask unanimous consent that on Friday morning at 10 o'clock, we have an up-or-down vote on the substitute I have offered with Senator MILLER. That way, there will be no doubt about the fact we are ready to bring it to a vote at that point. We would like an up-or-down vote on our amendment at 10 o'clock.

Mr. LIEBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. GRAMM. Madam President, the point I want to make—and I am sorry I had to put our colleague in a position like that to object.

Mr. DURBIN. Will the Senator yield?

Mr. GRAMM. I will yield, but the point I want to make is we want an up-or-down vote on our amendment. This is the President's substitute, and the President's supporters should have a chance to speak on it. We have gone on for 4 weeks on this bill, not because of what supporters of the President have done, but because we have had amendments offered, probably 90 percent of that time taken up by people who do not support the President's position. That is where we are.

I will be happy to yield to the Senator.

Mr. LIEBERMAN. Will the Senator yield for a question?

Mr. GRAMM. Yes.

Mr. LIEBERMAN. Madam President, of course, we want to have a vote on the substitute amendment. What is the basis for denying Senators the normal privilege, which the Senator from Texas has exercised and utilized on so many occasions, to offer a second-degree amendment to his substitute so the Senate can work its will, dispose of it, and then go to an up-or-down vote?

Mr. GRAMM. The question is a totally fair question. As I said earlier, people have a right to offer amendments, but the point is, this is the President's best effort to reach a compromise with the Senator and with those who oppose his proposal, and he would like to have an up-or-down vote on his compromise as we have written it, not as it would be rewritten by others. The Senator has every right to offer an amendment. We have every right to resist it and not let the Senator have a vote on it. But we would like at some point to have people vote yes or no on the President's proposal. That is all.

Mr. LIEBERMAN. Madam President, in responding, I want the record to

show—and I yield myself a moment more—we are fully prepared to have an up-or-down vote on Senator GRAMM's substitute, but after we have the right to offer an amendment. That is the way the Senate works. That is why I objected.

Mr. GRAMM. There is the rub. I yield to the Senator.

Mr. DURBIN. Madam President, I thank the Senator from Texas. Is the Senator from Texas aware of the fact he is mistaken again in saying only 3 Federal employees out of 1.8 million were terminated, when the official figures show in fiscal year 2001, 8,920 Federal employees were terminated, and in fiscal year 2000, 8,400 Federal employees were fired for reasons related to poor performance? Is the Senator aware of those numbers?

Mr. GRAMM. Let me respond—

Mr. DURBIN. Let me complete my question and then I will sit down. Is he aware, as he continues to use the INS example at the Honolulu Airport, that after the ruling he referred to, they did work out differences with the workers and established the 9 p.m. to 5 a.m. graveyard shift once they worked out negotiations?

Mr. GRAMM. Does the Senator know how long it took to work it out?

Mr. DURBIN. I am sure the time it took for the lawsuit. It took a long time.

Mr. GRAMM. While they were working it out, what if somebody brought a chemical weapon in to Hawaii where my kinfolk live. What if they had been killed?

I am constantly capable of misstating facts and figures. I always tell my children: Do not get into a debate about facts, look them up. All I am saying is, the facts I have—and I do have as much faith in mine as anybody else's—say the Clinton administration found 64,340 Federal workers to be poor performers; 434 went through the process to be terminated, and that can take as long as 18 months.

Maybe it does not matter unless somebody's life is at stake. That is all I am saying. If somebody's life is at stake, you do not do business as usual. You can defend business as usual, but when it puts somebody's life at stake, when a man, woman, or child has their life at stake, business as usual is not usual. I think there is some urgency here. That is all I am saying. I am not trying to indict any of these work rules or say they are crazy. I would hate to have to run my business under these work rules. I would go broke. All I am saying is, when people's lives are at stake, there is some urgency. I yield back to the Senator from Georgia.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Georgia.

Mr. MILLER. Madam President, how much time is remaining for our side of the argument?

The PRESIDING OFFICER. The Senator has 23½ minutes.

Mr. MILLER. I thank the Chair.

Madam President, I rise to speak not on the subject of the war against Iraq—that is for another day—but I rise to speak on the homeland security substitute that Senators GRAMM, THOMPSON, and I, and about 40 other Senators, have sponsored that the President says he supports and will sign.

We do not teach our children the lessons of Aesop's Fables as much anymore. The wisdom of Sesame Street and the Cat in the Hat have taken their place. There is one fable I learned at my mother's knee, sitting around an open fireplace, that I believe is pertinent to this debate on homeland security that has so divided this Senate along party lines.

It goes like this: A certain man had several sons who were always quarreling with one another, and try as he might, he could not get them to live together in harmony. So he was determined to convince them of their folly. Bidding them fetch a bundle of sticks, he invited each in turn to break it across his knee. All tried and all failed.

Then he undid the bundle and handed them the sticks one at a time, which they had no difficulty at all in breaking.

There, my boys, said he. United you will be more than a match for your enemies, but if you quarrel and separate, your weakness will put you at the mercy of all those who attack you.

That is a lesson for today. That is a lesson for the ages. That is a lesson for this Senate and the House, for Democrats and Republicans, for the executive and legislative branches of Government. I am one of the most junior Members of this body. I do not have the experience and I have not seen the number of bills most other Members have, so my historical perspective, admittedly, is limited. But in the short time I have been here, I have never seen such a clear choice as there is on this issue.

For me, there are no shades of gray. It is clear cut. Why, in the name of homeland security, do we want to take the power away from the President that he possessed on 9/11? It is power Jimmy Carter had, power Ronald Reagan had, power the first President Bush had, and power Bill Clinton had. Do we really want to face the voters with that position, that vote written large on our foreheads like a scarlet letter, and even larger on a 36-inch television ad two weeks before the election?

We must give the President the flexibility to respond to terrorism on a moment's notice. He has to be able to shift resources, including personnel, at the blink of an eye. When the Civil Service was created well over a century ago, it had a worthy goal, to create a professional workforce free of cronyism. Back then, it was valid. But all too often in Government, we pass laws to fix the problems of the moment and then we keep those laws on the books for years without ever following up to see if they are still needed.

The truth of the matter is a solution for the 19th century is posing a problem for the 21st century, especially when this country is threatened in such a different and sinister way.

I do not want to belabor the point about how long it takes to hire a person or how long it takes to fire a person. I just know it is too long. I also know that a Federal worker can be caught knee-walking drunk and he cannot be fired for 30 days, and then he has endless appeals. Productivity should be the name of the game, and we lose productivity when we have such a law. That is no way to wage a war.

Do we not realize there is another disaster looming just around the corner, where American lives are going to be lost? And another one after that? And that those attacks against Americans and against our country will occur for the rest of our lives? Would anyone dare suggest that is not going to happen? Would anyone suggest 9/11 was some kind of isolated phenomenon never to happen on American soil again? Surely no one, even the most naive optimist, believes that. Surely no one in this body believes that.

Over 60,000 terrorists worldwide have already been identified. Terrorist cells in some unlikely places, such as Lackawanna, NY, have been discovered. They are all around us, they are everywhere, and when these other attacks come, as certainly they will, do you not think Americans throughout this great land are going to look back at what went on at this time in the Senate? And when they do, do you not think some hard questions and some terrible second-guessing will take place?

I can hear them now. The talk show lines will be clogged, and the blame will be heaped on this body. Why was the Senate so fixated on protecting jobs instead of protecting lives?

The Senate's refusal to grant this President and future Presidents the same power four previous Presidents have had will haunt those who do so, like Marley's ghost haunted Ebenezer Scrooge. They will ask: Why did they put workers' rights above Americans' lives? Why did that 2002 Senate, on the 1-year anniversary of 9/11, with malice and forethought, deliberately weaken the powers of the President in time of war? And then, why did this Senate, in all its vainglory, rear back and deliver the ultimate slap in the face of the President by not even giving him the decency to have an up-or-down vote on his own proposal? This is unworthy of this great body. It is demeaning, ugly, and over the top.

What were they thinking of, they will ask? What could have possessed them? Do not ask then for whom the bell tolls. It will toll for us.

Few leaders have understood the lessons of history as well as Winston Churchill because he was not only a soldier and a politician, but he was also a Nobel Prize-winning historian. Perhaps then at this time we should remember the question Churchill framed to the world when he made that famous

Iron Curtain speech at Fulton, MO, at Westminster College in 1946. He first reminded the audience:

War and tyranny remain the great enemies of mankind.

Then he asked this question:

Do we not understand what war means to the ordinary person? Can you not grasp its horror?

Some of the remarks earlier this morning on this floor reminded me of something else about that speech and its aftermath. Churchill, being so blunt, did not go over very well. The American media and others did not want to hear that kind of talk. They called Winston Churchill a warmonger, and even the usually gutsy Harry Truman denied knowing in advance what was in the speech and even suggested that Churchill should not give it.

The old soldier went on and said some other very sensible and thought-provoking things in that speech, like war used to be squalid and glorious, but now war is only squalid.

I want to repeat that line that is at the heart of what I want to say today: Do we not understand what war means to the ordinary person? Can we not grasp its horror? Has scoring points with some labor boss become more important than the safety of our citizens? Can you not grasp its horror?

I wonder if you would feel the same way if the Golden Gate Bridge was brought down and 95 cars plunged into the San Francisco Bay. Could we then not grasp its horror? Would we then in the name of homeland security still want to take powers away from the President?

Or would you feel the same way if that beautiful little city of New Roads, LA, on the False River, with the Spanish moss dangling on those live oaks, were to go up in a mushroom cloud? Could you then not grasp its horror?

We rev up our emotions so easily to fight superhighways from leveling ethnic neighborhoods. So it would seem to me we should be able to get up the same kind of rage when terrorists want to level entire cities such as Baltimore or Atlanta or the manicured mansions of Newport, RI. If those beautiful cities were the target of a terrorist attack, could you then not grasp its horror? Or the Space Needle in Seattle, filled with tourists, crashing to the ground. Or a smallpox epidemic, in days, wiping out completely the Twin Cities of Minnesota or spreading across the forest plains of South Dakota. From the great Atlantic Ocean to the wide Pacific shore, from the Blue Ridge of Tennessee to Beacon Hill in Massachusetts, I guarantee then the country would grasp that war is horror. And as sure as night follows the day, when catastrophes occur, the Senate, us, we will be held accountable if we fail to give the President the tools to do his job.

Why are people back home always ahead of the politicians? Because most politicians, most at our level, do not get out among them anymore. We think we do. And some of us do. A town hall meeting here, a senior center there, a focus group or two, but we don't really. We do not talk to real people anymore. We are too busy in that room dialing up dollars. The only horror we can grasp from that experience is some fat cat telling us that he is already maxed out.

Why are we even in this debate? How will it be recorded in years to come when the historians write their accounts of the days of a Senate in September of 2002? How will our actions be judged by the people who go to the polls this year on November 5? Frankly, I think it will be one of our sorriest chapters, certainly the worst time in my short time here, a chapter where special interests so brazenly triumphed national interests.

Herodotus, who lived in Athens in the 4th century B.C., is usually called the father of history. He wrote about the Persian wars, and about the Battle of Marathon, which later historians called the seminal event in the history of freedom. Herodotus wrote that the Persians lost that battle, even though their army was bigger and better equipped, because the Persians committed the sin of hubris; hubris, best defined as outrageous arrogance. If you study the lessons of history, especially the lessons of the history of freedom, you will find that hubris would time and time again bring down many other powerful civilizations.

Hubris, outrageous arrogance, is so prevalent in this debate. The hubris of some labor bosses and their purchased partridges in a pear tree. Outrageous arrogance. What else can you call it when the interests of the few are put above the welfare of the whole country?

For the rest of our lives, we will have to live with what we do on this issue. Will we choose to protect the special interests or will we choose to protect the lives of Americans? Will we hog-tie the hands of our President or give him the same unfettered flexibility other Presidents have had before him? Do not let this be one of those votes you will look back on and ask yourselves for the rest of your lives, what was I thinking? For as we are reminded in the ''Rubaiyat'' of Omar Khayyam: The moving finger writes, and having writ, moves on. All your piety nor wit shall lure it back to cancel half a line, nor all your tears wash out a word of it.

I ask one last time, do we not understand what war means to the ordinary person? Can we not grasp its horror?

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I yield myself up to 5 minutes from my time.

I will answer the question the Senator from Georgia has raised. Of course we understand what war means to our country and average citizens. That is why our committee has labored so long and so hard to bring forth this bill creating a Department of Homeland Security, consulting with Members on both sides, working with the White House, to have what is, for the most part, a bipartisan piece of legislation.

Senators have spoken this morning about the Senate being divided on this bill. The fact is, the Senate is not divided on this bill. The Gramm-Miller substitute, by Senator GRAMM's own reckoning, is 95 percent the same as our Senate Governmental Affairs Committee bill. And it ought to be. We have a common ground desire to go ahead and create a Department of Homeland Security.

We have a few areas we disagree on, the most significant of which, the most controversial of which, is the one that the Senator from Georgia has focused on. But I cannot let stand the question that somehow the committee bill, supported by nine Democrats and three Republicans—Senator STEVENS, Senator VOINOVICH, Senator COLLINS—somehow puts the protection of Federal workers ahead of national security. We have a different way we have tried to achieve fairness for Federal workers. We can debate that. There is a compromise achieved by Senator BEN NELSON, Senator CHAFEE, Senator BREAUX, that we will have a chance to vote on, the amendment we want to put on to this bill. However, there has been so much misstatement and mythology that has no relationship to reality.

Let me state it clearly, national security always must trump and prevail over any other aspect of law in the cases that are described. Let me be very specific why I say that. I will quote the law, United States Code, Title 5, collective bargaining law, section 7106(a)(2)(A) which says, first:

Nothing in a collective-bargaining law shall effect the authority of any management official of any agency in accordance with applicable laws to assign and direct employees in the agency.

Second, section 7106(a)(2)(B) says:

Collective bargaining shall not effect managers' authority to assign work and determine the personnel by which agency operations shall be conducted.

This is the directly relevant statute section of law which will continue to prevail and expresses the clear desire—I presume the desire of every Member of the Senate—to give maximum authority, latitude, to managers at a time of national emergency; section 7106(a)(2)(D) of the United States Code, Title 5, provides that collective bargaining shall not affect the authority of managers ''to take whatever actions may be necessary to carry out the agency mission during emergencies.''

In an emergency situation, the agency has statutory authority to act immediately. It does not have to take any time to collectively bargain. The agency actually has authority to act, even if a collective bargaining agreement would ordinarily require some other course of action. All the agency head has to do is to invoke a national emergency.

Therefore, the claims we have heard in the Senate today about how union contracts tie the hands of managers with ''silly union work rules'' and about how managers cannot order employees to do what is necessary to protect the security of the American people in an emergency are simply not true.

In a Federal agency, there is no such thing as a union work rule that impairs a managers' authority to assign work, to direct employees, or to take whatever action that manager deems necessary in an emergency. That is the law. That is not my opinion; that is United States Code Title 5. When lives are at stake in the kinds of circumstances the Senator from Georgia has described, a Federal manager can impose any changes in assignments immediately, without dealing with unions at all. And the unions get to bargain over ways, if they choose to, to affect the impact of those decisions long after the fact.

So we have some disagreements about the specific wording of civil service protections, management flexibility, collective bargaining rights. But, please, make no mistake about it, in a case of national emergency, the law of the United States, unchanged by the committee's proposal, makes clear that national security prevails over any other section of the law and over any provision of a collective bargaining agreement.

I yield up to 10 minutes to the Senator from Maryland.

Mr. GRAMM. Madam President, are we going back and forth? We do not have to, but we normally have.

Mr. LIEBERMAN. In this case, because I have used very little time, I want to hold it to allow the Senators from Maryland both to have the chance to speak.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Parliamentary inquiry: How much time remains on either side?

The PRESIDING OFFICER. The Senator from Connecticut has 32 minutes. The Senator from Texas has 7 minutes.

Mr. SARBANES. So there are 7 minutes on the other side and 32 minutes left with the Senator from Connecticut?

The PRESIDING OFFICER. The Senator is correct.

Mr. LIEBERMAN. So I yield up to 10 minutes—let's say I yield up to 20 minutes for both Senators from Maryland as they wish to use that time.

Ms. MIKULSKI. I thank the Senator from Connecticut. I know others are anxious to speak.

Madam President, I rise in opposition to the Gramm-Miller amendment. I rise to support the efforts of Senator JOE LIEBERMAN to create a framework for homeland security. I had hoped, when we were working on this legislation, we were not going to be Democrats or Republicans, we were going to be the red, white, and blue party. And I really deeply regret that this argument has been so deeply politicized.

I am here to stand up to protect America and vote for a Department of Homeland Security. But I also have to stand up for those who are protecting the United States of America, our brave, our gallant Federal employees who are out there every day on the front line wanting to do their job, whether they are Customs workers, in the Coast Guard, the FBI, or the G men at the Department of Treasury, trying to do their job. I resent that my standing up for them, to have their constitutional right to organize, have freedom of assembly, would be called arrogant and hubris.

I listened to an argument that said: Battle? You don't know about it.

You are exactly right. I have never gone into battle. I do not bear the permanent wounds of war like some of our dear colleagues, names such as Dole and INOUYE. But I do know this. When we are going to send people into battle, I know we are going to think long and hard about it, because I know what it means. When I stand up for America, I also want to stand up, not for a Department, but for what America believes in.

Why was it OK to have a union in Poland that brought down the whole Communist empire and not to have a union here?

When our firefighters ran up into that burning building at the World Trade Center nobody asked if they were in the union. They didn't look at their clock and wonder if they were working to the rule.

When our emergency workers from Maryland dashed over to be part of the mutual aid at the Pentagon, they were mission driven. They weren't there because they were union members—Oops. I am wrong. They were there because they were union members. They belonged to a union. They belonged to a union called the United States of America. That is the union that they belong to, and that is the union they put first.

Why are we abusing them as if they are the enemy? I hope we will start to be as hard on terrorists as we are on these union members. It has been over 1 year—where is Bin Laden? We haven't found Bin Laden, but we are going to nitpick over whether or not you have a union.

We had an anthrax killer who attacked the Senate and used the post office as a weapon. I have Marylanders dead and I have Marylanders permanently ill because of the anthrax killer. Let's make sure that our workers can go out and do the manhunt they need to do, or to do the money hunt for those who fund them. Let's not worry about whether they belong to a union or they don't. They don't hide behind the union not to do their job. But I tell you, there are those hiding behind a right-wing agenda to get rid of unions in this country or to make unions the problem.

The words ''labor boss,'' what do they mean? It is OK to be a CEO and have more perks than a potentate—that is OK, we can have the imperial CEO. But when people organize, they are called labor bosses, as though somehow or another it is the goon squad? I really resent that. I resent that for my customs workers. I resent it for the postal workers after what happened at Brentwood. The postal workers didn't sit down and go on strike because we failed to protect them. They showed up every day, and because they showed up every day and did their job, as I say, two are dead and many are sick. And we are sick at heart because it happened to them.

So I am kind of tired of this. I am tired of the politicization of the process. I am tired of the cynical manipulation of this process. I feel as though I am being set up. If we stand up for the workers, we are somehow or another slowing down the debate on homeland security.

This national leader, JOE LIEBERMAN, the Senator from Connecticut, has been working on homeland security and an agency to do it long before the White House has. Just like he was calling for a national commission to look at what went wrong on September 11 long before the White House. We have been ahead of the White House, but now we are going to work with the White House.

I think we have to defeat the Gramm-Miller amendment—put that aside and no hard feelings. I think we have to then move on to the Lieberman bill, pass it expeditiously to show the world we can organize and mobilize to protect America, and then let's get on to the other debate related to Iraq. And then let's also get back on another debate, such as what is happened to the economy.

The stock market has plummeted. It is about as bad as it was when Gerald Ford was President, in 1974. We do not want to go there again and then need a Democrat to bail us out—or maybe we will need a Democrat to bail us out, but I don't want to go there. I want to stand up for this country, but I want to stand up for the people who built this country, and it is the trade union movement. If we don't start protecting the protectors, to make sure they have the right equipment, the right training, and also have the right legislative framework where they can have their constitutional rights, then we have other issues.

I want to go back to the bill JOE LIEBERMAN is presenting. I think it is an excellent framework. I will go back to being part of the red, white, and blue party. Let's put the politics of hard feelings behind us, let's get Iraq together, and let's show America we can govern, and let's show the bullies of the world we are going to take them on.

God bless the Federal employees who stand sentry every day to protect America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I rise, first of all, to commend the very able chairman of the committee, the distinguished Senator from Connecticut, for the very fine work he has done on this legislation, particularly on this issue of Federal employees, and the care and sensitivity with which he has struck the balance.

Obviously, on the one hand we have national security concerns. But as the Senator indicated in the quotes he took right from the legislation, the actual words of the legislation, the flexibility that is necessary to deal with national security questions or emergency situations is contained in this legislation. Those would be stripped out by the amendment. The Gramm-Miller proposal would then move the balance. Really, it would eliminate the balance. It would provide no significant or meaningful protections for the Federal employees.

In one sense it raises the question: What is the nature of the society we are trying to protect? What is the nature of the society we are trying to protect? How far are we prepared to go in denying the essential freedoms and essential protections in the name of national security? Not in the reality of national security because the Senator from Connecticut has protected that reality.

Their proposal would give unfettered authority to the Executive in dealing with their employees—the very employees we have to draw upon to protect the Nation and to respond to the challenges we face.

I want to assert in unequivocal terms that, in my judgment, our Federal employees are loyal and committed workers who are dedicated to providing a high level of service. Legislation creating the new Department of Homeland Security should protect the rights of those workers to engage in collective bargaining and to protect their rights under the current civil service system unless critical questions of national security or emergency are presented. And those questions have been dealt with carefully, skillfully, and thoughtfully by the able Senator from Connecticut. I commend him for those efforts.

I don't understand why some are engaged in beating up on the Federal employees. Why is this happening? Have the terrorist strikes driven some to this point? Do they not recall the Federal office building in Oklahoma that was blown up by a terrorist, albeit a domestic terrorist? Do they not recall that, and those dedicated lives that were lost? People all across the country who were working in similar office buildings went back in the next morning to do their job on behalf of the country to serve the public interest—all across America—despite the fact that some of their colleagues had just suffered this grievous blow.

Why do we have this assault taking place? The Federal managers have much of this flexibility. The legislation has the emergency flexibility in it. The civil service law was originally put in place to protect against politicizing the public service. It has been adjusted and amended over the years.

These arguments that it impedes productivity have been addressed again and again by the chairman's committee. Adjustments have been made in the light of changing circumstances. But no one has ever come before the committee and said we ought to take away all of those protections which have given us a public service with some integrity to it, and which is not subject to political whim.

How are you going to call upon people to serve above and beyond the basic requirements of their job description if you do not treat them with some dignity and respect?

I don't know. Some around here may find that they draw the best out of those who work for them by sort of beating up on them; that if you are sort of whipping them all the time and driving them without any protections, completely at your whim, that enables you to bring out of them the best response. That has never been my experience. I don't know of any labor-management text or treatises by noted experts in the field who say that is the best way to get a stellar performance out of your workers. I haven't seen that treatise yet. In fact, the ones I have looked at say that is exactly the wrong thing to do if you want to draw out a quality and stellar performance from your workers.

There are a lot of very dedicated employees across the country. I think employee rights and the civil service protections which we have are essential to the effective workings of our Government.

Some come and try to portray this as some special interest. The public interest is served by having these arrangements because those arrangements enable us to get better people into the public service, and to draw on them and their full capabilities.

I rise in very strong opposition to the provisions in this amendment that have been offered by Senator GRAMM and Senator MILLER which would strip away from our Federal employees these important collective bargaining rights and these important civil service protections. In my judgment, given the balance which the chairman has already struck on important national security questions, to do what this amendment does—taking away those bargaining rights and those civil service protections—will harm our national security, not help our national security. It will harm our national security.

For that reason, I very strongly oppose the provisions that are contained in this amendment that deal with our committed and dedicated Federal employees.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my colleagues from Maryland, Senators MIKULSKI and SARBANES, for their very eloquent and passionate and compassionate statements. I appreciate the way Senator SARBANES and Senator MIKULSKI talked about the impulse of the people who are working for the Federal Government.

I cited the law before which talked about the primary status of national security. But the people, the loyal patriotic Americans, does anybody really think in a case of national emergency they are going to be citing subsections of the collective bargaining agreement? They are going to do what any American did. In fact, that is what they did on September 11.

I was in a meeting of a group of Federal employees who happened to be from FEMA. They rushed from where they were to the Pentagon. A whole group of them were flown up to New York. They worked long hours. They got very little sleep for days and days. Obviously, the firefighters in New York are unionized. It is a remarkable story. I don't remember the exact number. I talked to a battalion commander of a unit of New York firefighters a couple of weeks ago. He said on September 11, when they heard about the planes hitting the World Trade Center, several hundred firefighters who were off duty just rushed to the scene to help. They weren't thinking about a collective bargaining agreement. They were thinking about America and their duty. These are public servants in the best meaning of the term.

Mr. SARBANES. Will the Senator yield?

Mr. LIEBERMAN. I would be happy to yield.

Mr. SARBANES. Given this display of dedication on the part of these public employees, why now all of a sudden are we seeking to take away from them these basic rights and protections?

If someone came in and said what a dismal performance we have, and, therefore, we ought to give the management more leeway to sort of beat on these people or something of that sort, I don't know that I would buy that argument. But at least it would be something of an argument.

Instead, you have this exemplary performance, this manifestation of real dedication. And despite that, some now are coming along and, in effect, wanting to beat on people who have behaved in the most extraordinary, dedicated, and selfless fashion.

Mr. LIEBERMAN. The Senator from Maryland is absolutely right. There is no justification for it. At some level, it is not only wrong, it is offensive. And I thank the Senator for his substantial contribution to this debate.

May I ask the Chair how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 12½ minutes.

Mr. LIEBERMAN. Madam President, I am very pleased to see in the Chamber my friend from Hawaii, Senator

AKAKA, a very significant member of our committee, who has contributed substantially, in so many ways, to our legislation that came out of committee. I yield the Senator up to 10 minutes for his statement.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. I thank the Senator from Connecticut.

Madam President. I rise to address the amendment offered by Senators GRAMM and MILLER as it relates to whistleblower protections. Contrary to press accounts, the Gramm-Miller amendment, as well as the House-passed bill and the President's initial bill, do nothing—do nothing—to protect whistleblowers. As Congress debates the creation of the new Department of Homeland Security, we must remember the role that whistleblowers play in protecting this great Nation. We commend the courage of FBI Special Agent Coleen Rowley, who blew the whistle on the serious institutional problems at the FBI which impacted the agency's ability to effectively investigate and prevent terrorism. We commend Federal Border Patrol Agents Mark Hall and Bob Lindemann, who risked their careers by alerting Congress to Border Patrol and INS policies that compromised the security of our borders.

Their actions alerted us to flaws in the current system and allow us to fix such problems in order to have a more secure Nation. Because whistleblowers play such an important role in protecting our country, we must do our part to protect them from retaliation for disclosing Government waste, fraud, and abuse. The Lieberman substitute is the only amendment before us that provides real whistleblower protection.

During the Committee on Governmental Affairs hearings on the creation of the proposed Homeland Security Department, I asked Governor Tom Ridge about whistleblower protections for Federal employees in the Department of Homeland Security. He said that all employees in the new Department would have whistleblower protections because the bill would require the new personnel system to be grounded in the public employment principles of merit and fitness.

However, requiring that a human resources system be grounded in the public employment principles does not equate to whistleblower protection. Congress has worked hard, and continues to work, to provide real whistleblower protection to Federal employees. Claiming that whistleblower protection will be provided based on such principles does nothing to assure Federal employees of their rights and protections or assure Congress that their bipartisan efforts on behalf of whistleblowers would not be frustrated.

Adding to my concern over the lack of protections afforded to employees in the new Department, H.R. 5005 and the amendment offered by Senators GRAMM and MILLER fail to provide the same level of whistleblower protection that Federal employees have in most Federal agencies. Although the House bill and the Gramm-Miller amendment allegedly maintain whistleblower protections and other merit system principles for employees of the new Department, both allow the Secretary to waive due process procedures and the remedies an employee needs to assert those rights.

The Gramm-Miller amendment bars the Secretary from waiving the applicability of several chapters of title 5 covering a variety of civil service issues. The list of nonwaivable chapters conspicuously fails to include protections against unwarranted disciplinary actions and performance appraisals, access to third party investigations by the Office of Special Counsel, or independent hearings at the Merit Systems Protection Board. Those agencies provide vital third party review and transparent enforcement for whistleblower and other merit system rights.

When Federal employees allege that they have been subject to a prohibited personnel practice, including violations of the Whistleblower Protection Act, OSC has authority to receive and investigate such allegations. If the special counsel finds reasonable grounds to believe that a violation has occurred and corrective action is required, she must report the determination to the MSPB, the affected agency, and the Office of Personnel Management, OPM. If the agency fails to act to correct the prohibited personnel practice, the special counsel may petition the MSPB for corrective action.

Since these procedures are not specifically included in H.R. 5005, it is doubtful that the protections afforded to other employees are available to Homeland Security employees.

In 1995, Congress gave wide latitude to the Federal Aviation Administration to create its own personnel system. Although this system was to afford whistleblower protections, the Justice Department found that Congress incorporated only selected provisions of title 5 into the FAA personnel management system, thus leaving OSC without authority to investigate or otherwise pursue cases of whistleblower retaliation alleged by FAA employees.

The reasoning of the Justice Department is supported by Supreme Court precedent, which states that:

> [w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied.

Moreover, Congress has repeatedly demonstrated that if its intention is to exempt certain entities generally from title 5, but to apply the substantive whistleblower protections and all the ancillary enforcement procedures, it knows how to do so unambiguously. For example, when Congress applied only selected provisions of title 5 to the Panama Canal Commission, it provided for application of the whistleblower protection provisions as follows:

> Section 2302(b)(8) (relating to whistleblower protection) and all provisions of Title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

It is fair to conclude that whistleblowers in the new Department do not have the same protections as other employees in the Federal Government due to the absence of any similar reference to the whistleblower protection enforcement provisions of title 5 in the House bill or in the Gramm-Miller amendment.

The Lieberman substitute, however, maintains all of the title 5 protections for whistleblowers to ensure that they have the needed protection to come forward and alert us to serious problems in the Federal Government that can hamper our efforts to secure our homeland. It also ensures the continuation of union representation which allows third party arbitration for whistleblowers. The Lieberman substitute also contains two provisions, sponsored by myself and Senator LEVIN, which enhance the protections afforded to Federal employees.

The Akaka-Levin provisions grandfather the whistleblower rights of employees transferred into the new Department and provide full whistleblower protections for TSA baggage screeners. Whistleblower protections for TSA employees had unanimous bipartisan support from the Governmental Affairs Committee and the provision mirrors the language of S. 2686 which was introduced by Senator GRASSLEY. Despite such widespread support, the Gramm-Miller ''compromise'' amendment does not include this bipartisan protection for whistleblowers.

Under the terms of the Aviation and Transportation Security Act that we passed last year, the Under Secretary of Transportation for Security has the authority to employ, terminate, and fix the conditions of employment for the Federal screening workforce while the rest of the employees of the Transportation Security Agency are governed by the personnel system established by the Federal Aviation Administration.

While the FAA personnel system now provides full whistleblower protection to employees, TSA security screeners are denied such protection. In May, TSA and OSC reached an agreement to provide limited whistleblower protection to TSA baggage screeners. Under this nonstatutory agreement, security screeners were not afforded appeal rights. However, the right to appeal to an independent third party is a necessary part of providing real whistleblower protection. Such protection is necessary to ensure that screeners feel secure in coming forward with information of government waste, fraud, and actions that are dangerous to public health and safety.

Recognizing the need for full whistleblower rights, Congress resolved to provide OSC enforcement authority and

full whistleblower rights to FAA employees in 2000.

I urge my colleagues to once again protect our Federal whisleblowers by providing full and explicit whistleblower protection to employees in the Department of Homeland Security. I urge my colleagues to oppose the Gramm-Miller amendment and support the Lieberman substitute.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, could the Chair indicate how much time is remaining on each side?

The PRESIDING OFFICER. One minute to the Senator from Connecticut, and 7 minutes to the Senator from Texas.

Mr. LIEBERMAN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. LIEBERMAN. Madam President, let me conclude in the moment I have remaining. I have the feeling this will not be the last moment I or other Members will have to discuss the Graham-Miller substitute or the question of protections for Federal workers.

There is a significant disagreement about the protections for homeland security workers. I do think, as we talk about the Nelson-Chafee-Breaux compromise, which I support, that it will be seen that it not only gives some protection to Federal workers, particularly those who are currently unionized and will be transferred to the new building, but it leaves the President with the last word on matters of national security. Let not the debate on that matter obscure the fact that, as Senator GRAMM himself has said, 95 percent of his substitute is the same as our committee bill. So let's settle the small point of disagreement and get the rest that we agree on done.

I believe my time has expired.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. Madam President, I have a unanimous consent request which I have informed the minority I am going to propound at this time. Senator NELSON has been designated as Senator DASCHLE's designee. I ask unanimous consent that following my unanimous consent request—and I understand there will be an objection—Senator NELSON be recognized to offer an amendment.

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

## UNANIMOUS CONSENT REQUEST—S. 1140

Mr. REID. Madam President, I ask unanimous consent, on behalf of Senator DASCHLE, that the Senate proceed to the immediate consideration of Calendar No. 210, S. 1140, the motor vehicle franchise contracts bill; that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Madam President, I have no objection to this request, but I understand there is a Senator on this side who wants to review it further, and on his behalf I object at this time.

The PRESIDING OFFICER. Objection is heard.

## HOMELAND SECURITY ACT OF 2002—Continued

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

AMENDMENT NO. 4740 TO AMENDMENT NO. 4738

(Purpose: To modify certain personnel provisions, and for other purposes)

Mr. NELSON of Nebraska. Madam President, I call up my amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. NELSON], for himself, Mr. CHAFEE, and Mr. BREAUX, proposes an amendment numbered 4740 to amendment No. 4738.

Mr. NELSON of Nebraska. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. NELSON of Nebraska. Madam President, I am pleased to join with my friends, Senator JOHN BREAUX of Louisiana and Senator LINCOLN CHAFEE of Rhode Island, in helping break the stalemate on the labor-management issues that have held up the homeland security legislation. We need to move forward and pass a bill that provides real security for all Americans without the distractions of labor-management issues.

This legislation is a huge undertaking, and the reorganization will certainly not be accomplished overnight.

That being said, we need to get to it right now because the later we come back to try to do this, the more difficult it will be. We need to do it right because unscrambling the eggs is impossible.

The new Department will not begin well if it begins with a staff who feels their concerns have been ignored. We now have the opportunity to break that logjam. This compromise addresses the concerns of both sides. The agreement preserves the Presidential authority to exempt union employees from collective bargaining as employees of the Department of Homeland Security. It also grants the President historic personnel flexibility, giving him the authority to hire, fire, promote, demote, and to rewrite civil service laws in the area of performance appraisals, classifications, pay rates and systems, and adverse action.

The agreement provides binding arbitration on personnel flexibility. All sides will have a seat at the table during the development of the new personnel rules and any disagreements over the rules will be referred to the Federal Service Impasse Panel, which will have the authority to set the rules and resolve disputes. This is modeled after the IRS Restructuring and Reform Act of 1998, which is current law.

The Federal Service Impasse Panel has discretion to impose new rules to break this agreement. This is existing law. It is the way in which we ought to proceed.

I know this amendment will receive broad bipartisan support, and I hope those of us who seek to complete action on this important legislation will support this effort to clear one of the major hurdles that has been currently blocking our progress so we can move forward on this important and vital security matter currently before us.

I ask for the support of my colleagues, and I hope we will move forward on this as soon as we possibly can. There is no reason to delay this legislation any longer.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Madam President, I support the amendment to the Gramm-Miller amendment which has been offered by our good friend and colleague Senator NELSON, and by my colleague Senator LINCOLN CHAFEE. It is very clear the Senate, as we debate homeland security, has reached a point where we are at a logjam. I, for one, and I think the vast majority of our colleagues, strongly support the creation of a Homeland Security Department, and why is very simple.

In light of today's terrorist threat to this country, we can no longer continue to operate and protect our Nation's security in the way we always have. In the past, too often the right hand did not know what the left hand was doing, and vice versa. It is clear, from the evidence that has now been presented, we have agencies within our own Government that had certain amounts of information that was important information, but information they did not adequately share with other Departments and agencies within our Government.

It is nice to have individual agencies know a little bit about the intelligence of an international threat, but if they do not share that information with other Departments within our Government, and they do not put all of the information gathered into one single place where people can look at it and analyze it, it is really not very effective information. It is certainly not as effective as if we have the collective wisdom of all of the various intelligence-gathering agencies within our Government.

The point has very accurately been made if the CIA has information the FBI does not have, if the Immigration Service has some information neither one of the other agencies has, that is not a very effective situation. If you throw in information that agencies such as the Drug Enforcement Administration, the Immigration and Naturalization Service, and local police and State police have, if each one of them keeps that information to themselves, we are not providing the service we should to the American people. For the first time, the creation of a Homeland Security Agency is going to say to all of these collecting agencies that gather the information that is so important, we should absolutely share it and involve each other in what that information is all about, and that is what the Homeland Security Agency does very effectively.

All of those, Republicans and Democrats together, who have worked very hard to bring this legislation to the floor have done a good job. This is good legislation. It is important legislation. What this legislation does is simply say to the American people after 9/11, we are going to create a new agency in our Federal Government to ensure our ability to better protect the rights and freedoms of all American citizens than we have in the past.

There are actions that have to be taken in times of national emergencies that are not normal, such as during this period of special concern. One of the powers that is necessary for a President to have is the ability to move agencies, departments, and individuals as quickly as possible, to the best position to serve the American public.

The President currently has the authority to say if it is important for national security that some of the collective bargaining rights of some of these employees of the Federal Government have to be temporarily set aside. He can exercise that authority now, and he has exercised it in the past. It has not been only this President but it has gone back, I think, all the way to President John Kennedy. We are in that type of a situation.

With the creation of a new Homeland Security Agency, however, we are talking for the first time about creating a new agency where thousands of employees may be taken out of one position and put into the Homeland Security Agency.

Somewhere between 40,000 and 50,000 who have collective bargaining rights where they are currently working, if they are transferred to a new Homeland Security Agency, for the first time may have those collective bargaining rights taken away.

How ironic it would be if the agency we are creating to protect the rights and freedoms of Americans is the agency that is utilized to take away the rights of American citizens to collectively bargain without the appropriate justification for doing so. I do not think anyone would want to say that is their desire.

This Homeland Security Agency is designed to protect the rights and freedoms Americans have gained. Some may argue about the wisdom of having collective bargaining rights, but it is a right American citizens have. So the question before this body now is: How do we give the President the authority to do what is necessary in this new Homeland Security Agency, which I support very strongly, while at the same time ensuring while we take rights away from American citizens, it is only done under the most unusual circumstances, and if it is necessary it be done, it be done very carefully so everyone will understand how this transaction is taking place?

What brings us to the floor today is this suggestion my good friends, Senator NELSON and Senator CHAFEE, and myself, have worked on to try to say, yes, we support homeland security, but we also want to make sure we protect the rights and freedoms of our own American citizens.

It is interesting to note, if people would only take the time—and I have said this so many times. I have said this to my good friend, the chairman, Senator LIEBERMAN—if all of us had the time to read the legislation and see the actual differences between the two versions, they would find the differences are far less than the similarities, particularly when it comes to this very issue which is causing this problem right now.

If we look at the current authority of the President of the United States with respect to what he can do to remove collective bargaining rights of American workers when he transfers them, it is almost similar, if not identical, to what our suggestion is to break the logjam. For instance, under the current law of the United States, under 5 U.S.C. section 7103, this is what people are saying, do not take away the President's authority. The current law says the President may issue an order excluding any agency or subdivision thereof from coverage under this chapter—meaning take away their collective bargaining—if the President determines, first, that the agency or subdivision has as a primary function intelligence, counterintelligence, investigative or national security work; and, second, the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations. What that says is the President can take away their collective bargaining rights now only if he makes a determination that these two things are present.

How do we handle it in our amendment, which I think can generate more than a majority? Simple. Our legislation says no agency can have their collective bargaining rights taken away, unless it is shown that the mission and responsibilities of the agency or subdivision materially change, and, second, that a majority of the employees within the agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

I will argue with anyone who wants to say that this somehow hampers the ability of the President to take away collective bargaining rights. Under our suggestion, the President, as under current law, has to make a determination that these people are important to intelligence gathering. That is easy for the President. And also that the mission and responsibilities of the agency from which he wants to take these rights away have materially changed. I think that is a very easy thing, under the circumstances that exist today for the President to be able to reach that standard.

It is interesting that under the current law there is no appeal from the workers to go to the NLRB or any kind of labor agency. But there is no appeal under our provision to go to any kind of NLRB or agency at all.

Some of my friends on the Republican side say, yes, but those workers could take the agency to court. That is true. But that is also true under current law. If someone under current law thinks the President has not made this determination correctly, they have the right to go to court. I don't know that it has ever been done. If so, I think maybe once it was not successful. But they have that right today. It is not appropriate to say we are going to create this new agency but we are going to give workers less rights than they have today.

Some have also suggested they show that mission and responsibilities of the agency have materially changed. That would never fit today's circumstances. The example they give is, we may have an immigration agency working in south Texas that is all of a sudden going to be transferred to the new agency to look after immigrants who are coming from suspected terrorist areas of the world and that their mission will not materially change. They will be doing the same work in a different agency and, therefore, not meet the test of having their work materially change because they will be doing the same type of work.

That does not create a problem. It is the intent of the authors of this to clearly say it is our intent when you are transferring people who are doing immigration work in border towns,

protecting our States under normal circumstances, that they have to do that type of work to stop international terrorists at a time we have been attacked by terrorists from other countries is materially changing what they are doing. They are now looking out after foreign terrorists who are trying to attack the United States and do grave harm to this country. Their work has materially changed. The President makes this determination under our amendment, as he does under current circumstances. There is no appeal from the workers to be able to go to any NLRB-type of organization and plead their case.

I plead with folks at the White House who have looked at this, take another look at it. Read what the current law says. Read what our suggestion is on collective bargaining. You will find there is not any difference that is worth objecting to if we are able to get this through the Senate with a large majority. It is not a good idea, I suggest, to have a 50/50 vote on homeland security and have to ask the Vice President of the United States to come to this Chamber to break the tie, to barely get this through the Senate. What type of unanimity does that show the American people as we pass homeland security? This amendment should pass with 75, 80, or 90 votes at least. Our suggestion in the Nelson-Chafee-Breaux amendment would allow us to have a huge vote in support of this proposition.

The second area we have addressed in our amendment is important. The question is, Do you give the President flexibility to move people around, to change, perhaps, how they get paid, or to change their functions because now there is a question of national security? We have done that in our amendment. We have clearly spelled out the fact that they have the authority to have management flexibility. We have taken the larger part of the so-called Portman-Quinn amendment offered in the House which gives management flexibility to the President.

I happen to think he should have management flexibility, but certainly not unlimited. He should have it in the areas he needs it. We have offered that. The Portman language in the Senate gave him management flexibility in six different categories. We have said that we will take four of those six categories and give him the flexibility he needs to make the decisions he would like to make in moving these people around.

The President should have that in terms of the national emergency. We give him the authority that he needs, like in Portman-Quinn. The only suggestion is, you should not be able to do it, like you cannot today, without some involvement of the workers. You ought to at least sit down with them and discuss with them as you do in other agencies—such as the IRS, the FAA. Under current law, you sit down and talk with the people you are going to be moving around to get their support, to get their ideas, to get their suggestions about how it can be made to work in a more efficient manner.

What type of managers want to dictate to the employees that he will do this, that, and the other, and oh, by the way, I want you to be a loyal worker after I do this? Our legislation requires that in making these management changes, they shall be worked out with the representatives of the workers and the Secretary, that they would enter into a written agreement to approve the management flexibility that the Secretary thinks he needs.

The point is, if they do not reach an agreement, do the workers have a veto? Absolutely not. As under current Federal law, as under the Internal Revenue Service when we gave them management flexibility, this body and the other body voted and approved when they cannot agree on management flexibility, you bring in the Federal Service Impasse Panel and they will have the authority under the Federal Service Impasse Panel—if the parties cannot arrive at an agreement, they have the authority under our amendment, as under current law, to take whatever action is necessary to resolve the impasse. That means if they want management flexibility, they sit down with both sides and discuss it. If the two sides cannot agree, they bring in the Federal Service Impasse Panel and they make the decision. It is a binding decision.

What is this Federal Service Impasse Panel? Is this an arm of the AFL-CIO? A new creation? No, it exists in Federal law today. There are seven people on it. Guess who appoints the seven. The President of the United States. He appoints every single member of the Federal Service Impasse Panel that will look at what the President is trying to do, and if the people cannot agree, his appointees, all seven of his appointees, unanimously appointed by the President of the United States, put into effect what they think is appropriate and improper. I don't think that is something that is bad at all. That is current law for the Federal service workers right now when they are being moved around.

I suggest if we could adopt the Nelson-Chafee-Breaux amendment we could put this aside. This bill has to go to conference with the other body. There will be further negotiations on this issue. Hopefully, we can come back with something that leaves the Senate, first, with a very large vote, instead of 50/50, and then come back in a fashion that will also generate the type of support that I think is critically important.

I ask for a ''yes'' vote on my amendment, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, creating the Department of Homeland Security is an enormous undertaking. In fact, it is the largest Federal undertaking since the creation of the Department of Defense. Senator BREAUX, Senator NELSON, and I offer this amendment to address the concerns, not only of the President, of course, but also concerns of the many thousands of Federal employees to whom we are entrusting our national security. As Senator BREAUX and Senator NELSON have pointed out aspects of this amendment, I think it is important to note that what we have done is taken Republican amendments, I say to my colleagues on this side of the aisle, we have taken Republican amendments from the House, the Republican amendment offered by Representative MORELLA from Maryland, Republican amendments offered by Representative PORTMAN and Representative QUINN, from Ohio and New York, and offered them into this amendment. This is an honest attempt at bipartisanship.

Most important, as Senator NELSON has said, this amendment will finally enable the Senate to move the process forward by getting this bill to conference with the House. Without this compromise, there will be no Senate bill. There will be no Department of Homeland Security. But with this compromise we can empower the conference committee to work with the administration to finalize a bill that will meet the President's legitimate concerns and protect employees' legitimate rights. I do urge passage of this amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. I ask unanimous consent the quorum call be rescinded.

Mr. REID. Reserving the right to object, Madam President—I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

Mr. LOTT. Madam President, I renew my request the quorum call be rescinded.

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

Mr. LOTT. Just to clarify my intent, Madam President, this is not to get recognition to try to offer an amendment or affect the procedure on the pending issue. Talking with Senator REID, he wanted to make sure that at the conclusion of my remarks there would be an opportunity for someone to seek recognition on the other side. I am sure that would be the case, although Senator BUNNING is here and wishes to speak on the amendment at hand.

I would like, rather than just to speak on the amendment, to use leader time, as was done by Senator DASCHLE this morning, to speak on this critical area.

The PRESIDING OFFICER. The Senator has that right.

Mr. LOTT. Madam President, the Senate now has been on this important issue over 3 weeks. The creation of the Homeland Security Department, something that clearly is very important, needs to be done. Perhaps it needed to be done earlier—without being critical of anybody. There needs to be some way to bring these different groups together and get a focus, get some direction, to give them the directions they need and the funds and the people to deal here at home with the threat by terrorists and by others. We need this Homeland Security Department.

I had thought we could probably do a Homeland Security Department in a few days—probably less than a week. But here we are, now. Obviously, we are going to take a month on this issue.

What is at stake? What has delayed this issue is the President's authority to impose national security interests, the security of the American people in their homes and their streets and their businesses, innocent men, women, and children here at home—for the President to be able to act in the national security interest, to have some flexibility in management authority to make sure this Department runs efficiently. Yet we see we are still arguing over work rules in the workplace. We are still arguing over whether the President should have the authority to say, for national security reasons: I am going to be able to move people and money around, and we are going to be able to override work rules to look after the security of the American people.

I think it is ridiculous that we have come to this point. I oppose the pending amendment because, once again, this is an effort to try to find a way to make it difficult or even impossible for the President of the United States—and not just this President, Presidents—to be able to do the job on homeland security.

The President has said that the Senate needs to act on homeland security. There is beginning to be doubt about the Senate's commitment in this area because we are putting special interests of certain groups over homeland security. That is a legitimate debate. The debate has been gentlemanly. We have not had many amendments because we have had more talk than we have had amendments. But now we have the President's proposal that has been offered by Senator GRAMM and Senator MILLER—a bipartisan bill with some changes that have been agreed to. And now we have an amendment that will be offered. That is all well and good. That is fine.

Then there is the separate issue of the Iraq resolution. What are we going to do about Saddam Hussein? Let me read to you what the President of the United States said on that issue.

I want to thank Members of both parties of the U.S. Congress for working to develop a strong resolution and a strong signal to the world that this Nation is determined.

That is what the President actually said. Now, I am deeply saddened by the tenor and the tone of the remarks of my friend, the majority leader, this morning on the administration's conduct and Iraq. We live in grave times, when this body should be carefully and deliberately debating the threat that Iraq's weapons of mass destruction pose against the United States. Instead we heard accusations that a President of the United States is using the possibility of war for political purposes.

Who is the enemy here? The President of the United States or Saddam Hussein? That is who was attacked this morning here on the floor of the Senate. I think we would be better served debating Saddam Hussein and the threat he poses for the world. He is a brutal dictator. He has already used chemical and biological weapons against his own people.

We know he has the ability to deliver these weapons. We know he has invaded his neighbors.

We had better be asking ourselves what we are going to do about this tyrant. He has for 11 years ignored 16 U.N. resolutions and has been involved in the killing of thousands of innocent people.

For anyone who seems surprised that we are engaged in this debate, I ask a very simple question. Where were you, 9 months ago, when the President of the United States came before a Joint Session of Congress and said, ''Iraq continues to flaunt its hostility toward America and to support terror. The Iraqi regime has plotted to develop anthrax and nerve gas, and nuclear weapons for over a decade. This is a regime that has already used poison gas to murder thousands of its own citizens—leaving the bodies of mothers huddled over their dead children. This is a regime that has something to hide from the civilized world?

Where were you, 9 months ago, when the President continued, ''States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic''?

Where were you 6 months ago, on the half year anniversary of September 11, when the President said, ''Here is what we already know: some states that sponsor terror are seeking or already possess weapons of mass destruction; terrorist groups are hungry for these weapons, and would use them without a hint of conscience. And we know that these weapons, in the hands of terrorists, would unleash blackmail and genocide and chaos''?

The President continued, ''These facts cannot be denied, and must be confronted. In preventing the spread of weapons of mass destruction, there is no margin of error, and no chance to learn from mistakes. Our coalition must act deliberately, but inaction is not an option.''

Again in May, the President said:

The evil that has formed against us has been termed the ''new totalitarian threat.'' The authors of terror are seeking nuclear, chemical and biological weapons. Regimes that sponsor terror are developing these weapons and the missiles to deliver them. If these regimes and their terrorist allies were to perfect these capabilities, no inner voice of reason, no hint of conscience would prevent them.

The President of the United States has been actively laying out the case against Iraq in a deliberate and focused way for nearly 1 year.

Just a month ago, Democrats in the Senate and Republicans in Congress were saying to the President: Mr. President, make your case to the American people. Come to the Congress. Make your case to us. Let us be engaged in the dialog and the debate, have some resolution prepared, and vote. Go to the United Nations. Make your case to the world community. Reach out to our allies around the world, and those not necessarily our allies, and show them the danger. Talk to them. Have a dialog.

The President did that. He has been going to the American people. So has his administration. He came to the Congress and said: You are right. I am going to consult with you and communicate with you.

Let us have a dialog. Let us have a debate. Let us have a vote.

A number of Democrats have stood up and said: Yes, this problem is serious, and we must address it. We must address it now.

The President went to the United Nations. He showed commitment and leadership. He turned the whole debate there around and put pressure on the United Nations to decide if they were just going to be a League of Nations or if they were going to really enforce their resolutions that had passed several times.

The President gave a bill of particulars about why we must act, and we must act now, because with ever passing day, week, month, and year, the threat grows, it doesn't diminish.

This is about the people in Iraq who are being oppressed and who have been killed. This is about security in the region. This is about security here at home.

Some people have said: He can't deliver nuclear weapons yet. He may not have them.

He has the delivery systems. He is working to make them longer range. We know that. He is trying to get materials he needs to have these nuclear weapons. But put aside the nuclear weapons. We know he has biological and chemical weapons right now. We know that. Some of these weapons can be delivered with an aerosol can—right here; not somewhere else; right here.

Have we forgotten the events of 9/11 so soon, which was so catastrophic and so big? Are we ignoring what we are learning from the hearings that are underway and from the realities of the threats from terrorists all over the world, and particularly from Saddam Hussein?

Once the President came to the Congress, some people said: Wait. We didn't mean now. Some people said: Let us do it instantly. Now some people say it is being politicized; we shouldn't do that. We should reduce the shrill of rhetoric. We should try to find a way to do this in the right way and in a broad bipartisan way.

But let us go beyond the situation right here at home. Is somebody going to accuse Prime Minister Tony Blair of politicizing the issue? He is not up for reelection. In fact, he is going against a lot of the people in his own party. I think the British people support what he is doing. But he has shown real courage. He went before the House of Commons this week and laid out the information he had. He deliberately pointed out the danger and why we need to act now. Nobody can accuse him of politicizing the issue.

This is what he said.

[The British Joint Intelligence Committee] concludes that Iraq has chemical and biological weapons, that Saddam has continued to produce them, that he has existing and active military plans for the use of chemical and biological weapons, which could be activated within 45 minutes, including against his own Shia population; and that he is actively trying to acquire nuclear weapons capability.

The Prime Minister continues:

Since the departure of the inspectors in 1998, Saddam has bought or attempted to buy: specialized vacuum pumps of the design needed for the gas centerfuge cascade to enrich uranium . . . an entire magnet production line . . . and has attempted, covertly to acquire 60,000 or more specialized aluminum tubes which are subject to strict controls due to their potential use in the construction of gas centerfuges.

All this, and Iraq has no civil nuclear powerplants. So they are not doing it for that purpose.

The Prime Minister concluded:

Two things about Saddam stand out. He has used these weapons, thousands dying in chemical weapons attacks in Iraq itself. He used them in the Iran-Iraq war, started by him, in which one million people died. And his is a regime with no moderate elements to appeal to. Read the chapter on Saddam and human rights. Read not just about the one million dead in the war with Iran, not just about the 100,000 Kurds brutally murdered in northern Iraq, not just the 200,000 Shia Muslims driven from the marshlands in southern Iraq; not just the attempt to subjugate and brutalize the Kuwaitis in 1990 which led to the Gulf War. Read about the routine butchering of political opponents; the prison ''cleansing'' regimes in which thousands die; the torture chambers and hideous penalties supervised by him and his family and detailed by Amnesty International. Read it all again and I defy anyone to say that this cruel and sadistic dictator should be allowed any possibility of getting his hands on more chemical, biological or even nuclear weapons.

That was the British Prime Minister.

This is not about politicizing the issue. We shouldn't do that. But it is a very important issue. The American people's security is at stake.

I think what maybe has happened here is a desire to try to find some way to put this issue off or to in fact make it political.

But let me correct the Record just in case some of the comments here were inspired by misinformation.

Today's Washington Post story on President Bush and Vice President CHENEY has remarks in it that are flat wrong. The partial quote cited in the Post was specifically referencing the current debate over management flexibility of the Department of Homeland Security—not the war on terror in Iraq. I think that is a very important and critical difference.

I took the time to look at the Vice President's remarks. I know DICK CHENEY. I have the utmost respect for him. I have heard him speak to several different groups—political meetings and nonpolitical. He is always low key, very studied in what he says, very careful, and it is never inflammatory. He does talk about the need for the right actions in the economy, national and homeland security, and trade promotion authority. He has talked about the things we have done.

Then he said:

President Bush and I are very grateful for the opportunity to serve our country. We thank you for your support, not just for our efforts, but for good candidates like Adam Taff, who will make a fine partner for us in the important work ahead.

What is the problem with that?

When I looked at what was said today, I must confess, I was shocked and even horrified. I have taken a moment here to talk to some of the colleagues on the floor about the important work ahead of us.

At a press conference this very morning, I was saying: We are going to work this language out. We are going to find language that will give the President the authority he needs but language that will have broad bipartisan support in both bodies. We can find a way to do that.

But the accusations leveled against the President of the United States today cannot stand. This is not about unity. That is the worst kind of division. I am going to try to remain calm and attribute the reaction I heard today to perhaps misunderstanding. We are not going to question anybody's patriotism here, but we are going to question the commitment and what we need to do to protect the American people.

It is not about questioning it; it is about doing it. We are not going to pass a homeland security bill that ties the President's hands. It is not going to happen. And he will not sign it.

We are going to take action against Iraq to make sure their weapons of mass destruction are located and destroyed. If it takes regime change, this Congress, this Senate is already on record saying we support that.

I think it is time we get a grip on things. We have a lot of work to do. Here in the Senate, we are not moving anything. We are becoming totally dysfunctional. And now we are going to add to that the type of accusations we had here this morning?

We have 2 weeks and 2 days or so to do a lot of important work: the defense of our country, homeland security, economic security issues that we need to address—terrorism insurance. There is so much we need to do. I hope we will find a way to do those issues and get this discussion back on the right track.

I yield the floor, Madam President.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, we have been hoping to move this process along. And I would hope that we would continue to have debate throughout the day on the Gramm and the Nelson amendments.

The Senator from Texas had noted earlier that he was desirous of an up-or-down vote. I would be prepared to provide that up-or-down vote. I am going to propound a unanimous consent request to accommodate that, so I will do so at this time.

I ask unanimous consent that the Senate vote on Senator NELSON's amendment at 10 o'clock in the morning, tomorrow, and that immediately after it has been disposed of, Senator GRAMM be recognized to offer a further second-degree amendment that is the text of amendment No. 4738, and that the Senate then vote immediately in relation to Senator GRAMM's amendment.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, reserving the right to object, all we have asked for, from the very beginning, is to have an opportunity to have an up-or-down vote on the President's proposal, not having an up-or-down vote on it as amended by somebody else.

The Senator has every right to amend it. It just seems to me, in a wartime situation, when the President has proposed a compromise and has asked that we vote on it, that we ought to do that. And on that basis, I will object.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. DASCHLE. Mr. President, I have a hard time understanding the basis for

the Senator's objection. We have offered him an up-or-down vote on his amendment, just as he has suggested.

Mr. NICKLES. Will the majority leader yield?

I am going to help the majority leader.

Mr. DASCHLE. I will yield in just a moment.

MOTION TO COMMIT

Mr. President, I do not see that we have any other option, then.

To ensure that we keep in place the current parliamentary circumstances that we have legislatively, I move to commit the bill to the Governmental Affairs Committee and that it be reported back forthwith with the Lieberman amendment No. 4471, as amended, pending. And I ask for the yeas and nays.

The PRESIDING OFFICER. The motion is before the Senate.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4742 TO THE INSTRUCTIONS OF THE MOTION TO COMMIT H.R. 5005 TO THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DASCHLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 4742 to the instructions of the motion to commit H.R. 5005 to the Committee on Governmental Affairs.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment there is not a sufficient second.

Mr. DASCHLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DASCHLE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4743 TO AMENDMENT NO. 4742

(Purpose: To modify certain personnel provisions, and for other purposes.)

Mr. DASCHLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 4743.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I ask unanimous consent to be listed as a cosponsor of the bipartisan Gramm-Miller substitute and rise to speak in favor of that amendment.

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

AMENDMENT NO. 4738

Mr. BUNNING. Mr. President, I believe the proposal of Senator GRAMM and Senator MILLER represents our best hope of passing legislation this year to put a new Homeland Security Department in place.

The Gramm-Miller substitute addresses the legitimate policy concerns of many Senators on both sides of the aisle while also giving the President the flexibility and the authority he needs to put together and run a Homeland Security Department that fulfills its primary mission—defending our people and our Nation.

This amendment is a good, bipartisan compromise. It contains a number of provisions from the original bill reported out of the Governmental Affairs Committee. It also contains the bulk of what the President has asked.

As a member of the Governmental Affairs Committee, I would like to take a few minutes to talk about what I see as the strengths of this proposal as well as the weaknesses of the Democratic proposal and why it is imperative that we pass Gramm-Miller now.

One of the most important things this bipartisan amendment does not do is, it does not take away important Presidential national security authority when this country is in the middle of a war. Going back to the markup of the homeland security bill in committee, many of us argued that the President needs to have the maximum flexibility to effectively administer a Homeland Security Department. We are fighting a new type of war. The Department is going to have to be nimble. Officials there are going to have to be able to react to events at home and abroad on a moment's notice. The President must have the ability to make decisions and move resources around to fight an enemy that has spread throughout the world and could attack us from any point.

Every President since Jimmy Carter has had more discretion in running agencies that were involved in national security. For instance, over the past 30 years, every single President, Republican or Democrat, has been able to declare, and actually has declared, that some civil servants are exempt from collective bargaining rules that apply to other agencies. The Democratic bill would change that when it comes to homeland security.

Let me be clear: The employees at the new Department are going to have a very important job to do. They deserve our respect and our support. But to go as far as to give the President less authority over them and to put more bureaucratic rules into place is to distract from the reason we are debating this legislation in the first place.

We need to make sure these employees have the resources to do the job. We need to make sure the President has the same ability. To give him less authority is the exact opposite of what we need to do.

In short, that means the Democratic proposal would actually give the President less flexibility than he already has under current law. That is crazy. There is no reason to have this debate if we are only going to talk about making it harder, not easier, for the President to lead us in the war on terrorism.

This debate is supposed to be about crafting rules and building a new Department to help fight the war on terrorism. It is not supposed to be a debate about rolling back the clock to an outdated way of thinking about labor and management relationships.

I have said throughout this debate that if the choice comes down to national security versus more redtape and rules, national security must win every time.

Instead, what the Gramm-Miller proposal would do is give the President necessary management and personnel flexibility to allow him to integrate the pieces of many standing agencies into a new Homeland Security Department. This is going to be an awesome task we are undertaking. We are talking about taking bits and pieces from literally dozens of current agencies and quickly fitting them together into an effective unit called the Department of Homeland Security.

That job is going to be an even harder one if we continue to focus on old rules and redtape instead of how to fashion a new and flexible agency to fight a war in the 21st century.

Another reason to support Gramm-Miller and to oppose the Democratic bill or any substitute for it is the forward-thinking parts of the bipartisan bill when it comes to civil service and personnel issues. For instance, Gramm-Miller gives the President flexibility when it comes to management decisions relating to hiring, evaluating, and compensating. Democratic opponents look at this and see the glass is half empty. They claim it is a pretext for cracking down on workers. I see the glass as half full and view these reforms as a way for the President and the others to reward those employees who do a good job and provide the flexibility to hire the best and brightest for this new Department. After all, we are talking about defending our Nation and our people. Employees who do a good

job as part of that should be rewarded. Those who do not should either be disciplined or fired.

At the same time, Gramm-Miller also retains whistleblower protection and a full range of employee benefits and protections. I understand it might not be everything the Government unions want, but it is still a very good deal.

Gramm-Miller is also on the right track when it gives the President extra authority to transfer funding and responsibilities to the Homeland Security Department. Right now his hands are often tied by redtape, but if we were to have another 9/11 disaster, if we were to see another attack, the President would need more authority to act quickly when it comes to moving around funds and responsibilities to make sure we respond as rapidly as possible.

I know some of my colleagues worry about this new authority. They think we are going too fast and that Congress would be giving away some of its constitutional authority. I totally disagree. Gramm-Miller specifically says that as to the biggest changes, the President would ask Congress for permission by submitting a resolution to the House and to the Senate and that we would have 90 days to act. That is the type of consultation with which I am comfortable.

Obviously, we have to respect the separation of powers as well as Congress's power of the purse and our powers to declare what role they are going to play. We can do this while at the same time giving the President more tools to effectively administer the Federal bureaucracy.

My friends on the other side of the aisle who oppose Gramm-Miller have also thrown out a couple of other red herrings when it comes to labor and personnel issues. They have tried to fall back on the notion that the proposal would undercut the Davis-Bacon rules covering prevailing wage on Government construction projects. But the fact is that Gramm-Miller is neutral on this issue and explicitly does not address it.

They also try to make the claim that supporters of Gramm-Miller are using it as some devious way to undercut, in a broad manner, rights under the Federal Labor Relations Act. Again, this just is not true.

The President does have the right under Gramm-Miller to exempt applications of the rules on a limited basis but only—but only—if national security is involved. That sounds reasonable, and I believe most of the American people, if given a choice between tying the President's hands with labor negotiations or giving him the ability to act for national security, would give him the benefit of the doubt.

When you get beyond the debate about broad policies and personnel issues, Gramm-Miller also makes sense when it comes to the nuts and bolts of making changes to specific departments and agencies.

For example, when reorganizing the Customs Service under the new Homeland Security Department, the Democratic bill would provide for the transfer of Customs to the Homeland Security Department but at the same time also requires it to be maintained as a distinct entity within the Border and Transportation Security Directorate.

That also makes no sense. Customs cannot be in two places at one time. It is either a part of homeland security or it is not. There is no other way I can see how it can function effectively by splitting its resources and focusing among two agencies.

The only reason I can see that the Democratic bill does it this way is to protect turf, but all this would do is to protect the same old stovepipe system and personnel we have now, but under different names. If anything, moving Customs into two different agencies might make things worse.

Instead, Gramm-Miller would transfer Customs to homeland security and reserve at Treasury the limited right to issue regulations covering some of the Customs' revenue functions. That seems like a much more sensible and workable solution to me.

I know it might not be popular in the bureaucracy, and there might be some at Treasury and Customs who are resisting this change, but if it is a choice between keeping the status quo or some sort of warped version of it to save the bureaucratic face to protect turf, then I have no problem in upsetting the applecart and supporting a new streamlined approach to Government.

Another example of what I am talking about is how the competing proposal deals with FEMA. The Democratic bill moves FEMA to a new Department as a ''distinct entity'' that cannot be reorganized or merged.

The Gramm-Miller bill simply moves FEMA to the Homeland Security Department.

I do not even understand what the Democrat bill is trying to do here. It claims to move FEMA to Homeland and to give the Secretary some authority over it. But at the same time it says that FEMA cannot be reorganized or improved.

This is a distinction without a difference. Either FEMA is part of Homeland or it isn't.

Either the new Secretary has the authority over FEMA and the ability to put its resources to work or he doesn't.

The Democrat bill tries to tiptoe around the issue so that it does not step on toes. But when it comes to war and fighting terrorists, it is time to step boldly.

Instead of talking about shades of gray and playing word games, we need to start looking at the world in black and white and acting boldly.

In other areas, Senator GRAMM and Senator MILLER have gone out of their way to adopt workable sections of the Democrat bill and to compromise.

For instance, Gramm-Miller adopts the Democrat bill's language when it comes to Freedom of Information Act issues and the law enforcement powers of inspector agents.

These might seem small, but especially with FOIA I know that many of my colleagues were worried about accountability of the new Department, and I appreciate the bipartisan efforts to reach across the aisle from Senator GRAMM and Senator MILLER.

Gramm-Miller also borrows from the Democrat bill when it comes to provisions covering Federal workforce improvement and adopting reforms worked out in the Governmental Affairs Committees by Senator VOINOVICH and Senator AKAKA.

It accepts all of the Democrat proposal when it comes to emergency procurement authority.

On the subject of Administration of the Centers for Disease Control, it also accepts all of the Democrat proposal.

Gramm-Miller proposes effective immigration reforms by adopting the Democrat bill's proposal to create an Immigration Affairs directorate within the new Department and to transfer the Immigration and Naturalization Service to it.

Senator GRAMM and Senator MILLER also accept, with only minor changes, the Democrat's proposal to modify the Coast Guard's mission and reforms the rules that cover how we issue visas.

In short, Gramm-Miller has tried to take the best and most acceptable parts of the Democrat bill while also maintaining the flexibility and some of management proposals that the President says he needs.

For instance, the President's plan provides for unified intelligence analysis and infrastructure protection in one organization.

This would have a single agency responsible for providing both threat assessments and vulnerability analysis. Nowhere in the Government does this currently take place. This plan would fill that gap.

As the current Joint Intelligence Committee hearings have shown the last several days, our intelligence community needs some work.

Most importantly, information about what is going on in this country needs the most work, and information about what our own weaknesses are is largely nonexistent. This amendment would allow these two types of analysis to come together and provide the most accurate information about what we need to do as a Nation to protect ourselves domestically.

This flexibility and reform is not part of the Democrat bill.

We have been at loggerheads on this legislation for almost 4 weeks now.

I think we know it is getting down to crunch time and it is time to compromise. That is what Gramm-Miller does.

No one is going to get everything of what they want and the time before adjournment is shrinking rapidly.

I think it is time to move beyond confrontation and toward a workable

compromise that will allow us to put an effective Homeland Security Department into place now.

I know that some Members think we are moving too fast and they want to spend more time debating the bill.

I think that is the wrong way to look at this situation.

Obviously, we have to get things right in building the new Department. But at the same time, we all know that if we can come up short we come back and fix things down the road. I do not think anyone seriously doubts that if we pass a bill that needs to be tweaked down the road that the Congress is going to drag its feet on such an important national security issue.

We owe it to ourselves and the American people to finish work on this bill. We have been debating it for close to a month. Before that, it was subject to some public debate during the August recess and during the Government Affairs Committee markup in July. We have had over 15 hearings on this bill.

We are not reinventing the wheel. We have had a good debate. I think we have a good handle on this bill and now it is time to vote.

If we are worried about making mistakes or not passing a perfect bill we will be here until doomsday—literally.

This is a complicated issue. There are bound to be mistakes. But I think we are on the verge of getting much of it right, and on many levels we will not know for sure how to make the Department work until we get it up and running and see where the shortcomings are.

So let's get started. The people who will staff this new Department are already out there, trying their best to protect America.

They are dedicated public servants who make many sacrifices to serve this Nation and their fellow citizens, but right now they are spread throughout the Government.

It is time to bring them together and to harness their collective talents for the national good.

There is an old phrase that says one should either leads, follow, or get out of the way. Right now we are doing none of those things. We in Congress need to start leading

The President has been pretty clear about what he needs to administer the new Department.

He has told us what he can accept and what he has to veto.

The House has acted, and now I think a bipartisan majority in the Senate ought to be ready to act.

We can continue talking or try to pass a political bill that the President will send right back to us.

Instead, we should adopt Gramm-Miller. It is a good starting point—a solid, consensus bill.

It borrows the ideas from competing bills, and as the only bipartisan bill it offers common sense solutions when it comes to building the Department of Homeland Security.

I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader.

Mr. REID. Mr. President, before the Senator from Kentucky leaves the floor, I, as all Senators, I am sure, feel very fortunate to be able to serve in the Senate. One reason is the associations we develop with our fellow Senators. One of the things I haven't had a chance to say publicly, or even privately, to the Senator from Kentucky is how much I enjoy serving with him.

As a boy, I used to listen to baseball games—no television; we used to listen to the games. Of course, JIM BUNNING was one of the people who pitched those great ball games. Then, of course, I watched him do all the great things he did later on. And now, to serve in the Senate with a member of the Baseball Hall of Fame, for somebody who wanted to be a baseball player—that was what I wanted to be until I found out I wasn't good enough—is really one of the pleasures of my life—to say I served with somebody who is in the Baseball Hall of Fame.

Mr. President, I will send a cloture motion to the desk.

Mr. BUNNING. Will the Senator yield?

Now you have switched your allegiance to a fellow who lives in your home State?

Mr. REID. I have to admit I did give a statement on the floor the day before yesterday about another great pitcher who certainly will be a member of the Hall of Fame, Greg Maddux. In my statement, I said Greg Maddux is less than 6 feet tall, weighs maybe 10 pounds more than I do—not very big, clearly not as big as the Senator from Kentucky. The Senator from Kentucky hasn't gained much weight, if any, from the time he pitched. Greg Maddux is one of the great ones. On Sunday he won his 272nd game. He has an ERA lifetime of about 2.5. He tied Cy Young's record of winning 15 games 15 years in a row.

One of the interesting things I learned was that, as a 20-year-old, when he came up to the majors, the second game he won, he pitched against his brother Mike, and beat him. Mike played for the Cincinnati Reds at the time when he beat him.

I haven't switched my allegiance. I can have allegiance for more than one great baseball player.

Mr. BUNNING. I thank the Senator.

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under Rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Gramm-Miller amendment No. 4738 to H.R. 5005, the Homeland Security legislation.

Harry Reid, Ben Nelson of Nebraska, Hillary Rodham Clinton, Debbie Stabenow, Mark Dayton, Patrick Leahy, John Breaux, Tom Carper, Tom Daschle, Byron L. Dorgan, Jack Reed, Jim Jeffords, Tim Johnson, Mary Landrieu, Max Baucus, Daniel K. Inouye.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Because of the parliamentary matters we have been going through this afternoon, a number of Senators have come to the floor and have wanted to speak and have been prevented from doing that. Therefore, I hope things will run a little more smoothly this afternoon.

I ask unanimous consent the Senator from Utah, Mr. HATCH, be recognized for up to 15 minutes, Senator NELSON be then recognized for up to 10 minutes, and Senator NICKLES for 10 minutes. He told me that is what he wanted. Then, Senator VOINOVICH waited here all morning and part of the afternoon. I ask that he then be recognized for up to 35 minutes to speak and that then Senator LIEBERMAN, the manager of this bill, be recognized after that for up to 30 minutes.

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

Mr. REID. In that order.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I personally want to express my regard for the distinguished Senator from Kentucky and his excellent remarks today. I think he covered the problems quite well. I personally appreciate the friendship we have together and the great leadership he provides in the Senate. I think he did a very good job. I agree with him.

Mr. President, every Member of this body, and every citizen in this country, knows that the most critical issue facing our Nation today is the task of securing our homeland and protecting our country from further terrorist attacks. The enormousness of this task cannot be overstated; and its implementation is equal measures vexing and daunting. But we must rise to the challenge. And we must do so together. No less than the lives of our citizens and the security of our nation hangs in the balance.

With regard to this, I pay my compliments to the distinguished Senator from Georgia who gave a speech this morning that was really very good. Senator MILLER, it seems to me, has made a real effort to bridge the gap between Democrats and Republicans on the floor and otherwise. His remarks were just absolutely right on the money. I personally express my regards for his remarks and express my love and affection for him as a Senator. He is a good man, and we ought to listen to him.

I speak today out of a spirit of bipartisanship. I am proud of the way that Congress has come together on issues of national security since the horrific

attacks of September 11. In the wake of these tragic events, members of the Judiciary Committee and Congress worked tirelessly to provide the Attorney General with the tools necessary to fight terrorism worldwide and protect our country. Specifically, we passed the PATRIOT Act, a critical set of reforms needed to unleash our government's ability to detect and prevent terrorist attacks, by an near-unanimous vote of 99–1. It is my hope that enough of that robust bipartisan spirit remains today as we consider the landmark legislation to create the Department of Homeland Security. As we have just passed the anniversary of the terrorist attacks that killed thousands of innocent Americans, such a sentiment is not just sorely welcome; it is also fundamental and necessary and appropriate.

Today, we face a significant new type of military threat, one far different than post-World War II communism. We face today the danger of numerous, well-financed, well-trained and completely ruthless terrorist groups who will stop at nothing to cross our borders and attack our institutions, infrastructures, people and freedoms with all types of weapons. They engage in unconventional warfare and are bound by no rules. I speak not of just al-Qaida but many other terrorist groups. The creation of the new Homeland Security Department is a massive task precisely because the terrorist threat is so pressing and pernicious.

The proposal to create a new Homeland Security Department is the next logical and necessary step in our country's war against terrorism. In my view, there are several components that are critical to ensuring its success.

One of these involves our intelligence practices. In the aftermath of September 11, it is abundantly clear that we must improve the gathering, sharing, and analyzing of information within and among our Federal, State and local agencies. Our nation clearly needs to have a centralized office that is responsible for reviewing all of the terrorism-related information that collected by any agency, be it the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, or one of the others. The Homeland Security Department is a critical step to ensuring that intelligence information is comprehensively collected, analyzed and disseminated. We must be sure not to handcuff the new Department's ability to do its job in this area. In particular, we must take pains to ensure that we do not unnecessarily limit the use of this intelligence within the new Department. The stakes are simply too high to place artificial constraints on this important function.

Another critical area involves managerial flexibility. The new Department of Homeland Security must be given the ability to hire and retain the very best people to do the work of keeping our country safe. We need to give the Secretary of Homeland Security such fundamental management powers as the ability to remove poor performers and reward exemplary employees with merit-based pay raises. Believe it or not, under our antiquated system of Federal employment rules, it can take five months to hire a new employee and 18 months to fire a terrible worker. Most Federal employees also get annual pay raises based on how long they have worked for the government, not how well they do their jobs. The vast majority of ordinary Americans don't have such outdated rules in their workplaces. There is absolutely no sound reason to move such inefficiencies to the new Department of Homeland Security. That is the current law. The bill before us even expands that.

Let me be clear: I am convinced that the vast majority of Federal workers do an outstanding job for our country. That is why I am not concerned with giving the Department of Homeland Security more managerial flexibility. Indeed, because most Federal workers do great work, they have nothing to fear and everything to gain from an improved system that allows their work to be rewarded through merit-based bonuses and raises. Only poor workers need be concerned, and they should be. Frankly, there is no place for underperforming or incompetent workers in the agency charged with protecting our safety. The new Department has the Herculean task of preventing terrorist attacks and keeping our country safe. I cannot imagine any reason why we would handicap it by imposing a system of rules that protect bad Federal workers at the expense of good ones and, more importantly, at the expense of our nation's safety. That is what the amendment to the bill by Senator GRAMM and Senator MILLER changes.

The need for flexibility, in my view, must run through every corner of the Department of Homeland Security. The very nature of our enemy is quick and deliberate action; terrorists are quick to change their members, associations, plans, training bases, and destructive methods. Terrorists, moreover, come in many different shapes, colors and ideological bents. We must equip our security forces with the ability to be similarly adaptable. The Department simply must have the ability to adapt itself to a constantly changing enemy threat. We will fail our task miserably if all we end up doing is reorganizing dozens of inflexible agencies into a new titular Department of Homeland Security. If the Secretary of Homeland Security is required to keep intact within the Department each of the individual agency's personnel, components, budgets and rules, then we don't have a new department—just a hodgepodge of independent agencies. We will have created just another layer of bureaucracy. That cannot be our goal. That cannot constitute effective governance. For this reason, I think it is absolutely essential that we give the Secretary of Homeland Security the ability to move personnel, assets and money to best meet the rapidly shifting terrain of terrorist threats.

We all recognize that the war against terrorism cannot be won simply by reorganizing existing government agencies into a Department of Homeland Security. That Department must be equipped with the tools to complete its task. Moreover, it is essential that we tap into the resources and expertise of America's private sector. The new Department must enlist the aid and expertise of America's businesses to enhance our nation's security, and I am committed to making sure that the new Department is able to receive the uninhibited advice and counsel of our business leaders. It is private businesses which own and operate most of our infrastructure—our telecommunications, energy and financial systems. Our government cannot effectively fight this war against terrorism without their support. We must arm our agencies with the best technologies available, and our private sector is a critical player in this process, as it has been in our national defense and military. Our war against terrorism would be hopeless without the active innovation and support of private industries. We must also recognize that the private sector cannot realistically step up to help wage our fight against terrorism without some reasonable protection from frivolous tort litigation.

Congress must act and must do so quickly and carefully without political gamesmanship. Our task is too important; we cannot afford to sacrifice our country's safety in the process. The threat of terrorist attacks on our homeland, as well as abroad, is here to stay. Our response to this threat requires a singleness of focus. All of us in Government have a duty to do all we can to protect the American people from future terrorist attacks.

I have spent considerable time considering the tools that the new Department of Homeland Security simply must have to create an effective system of protecting our borders from terrorism. Having done so, I have reluctantly concluded that I cannot support Senator LIEBERMAN's proposal, which simply cobbles together dozens of disparate agencies without any mechanism for adapting their personnel and missions to meet the challenge of the new Department. On the other hand, I find myself in great agreement with the central proposals of the Gramm-Miller bill. It is a bipartisan measure. And, as all bipartisan bills, it represents a series of compromises. But, I am convinced, the compromises will not, in my view, detract from the core ability of the Department to do its job and protect American lives. Critically, the Gramm-Miller bill provides enough flexibility for the President and the Secretary of Homeland Security to respond to an ever-changing, multi-headed threat.

The task of guarding against terrorism is immense; the risk of failure is enormous. We simply cannot be bound by partisan interest groups in this time of war and crisis. Let us join together to pass the bipartisan Gramm-Miller bill so that we can feel certain that we have done all we possibly could to protect the mothers, fathers and children for whom each of us work.

The same considerations that compel me to support the Gramm-Miller bill cause me to oppose the Nelson-Chafee-Breaux amendment. While this amendment is a slight improvement from the Lieberman substitute, it still ties the President's hands much too much. Like the Lieberman substitute, the proposal cuts back on the President's existing authority to decertify the union affiliation for workers in the new Department in the interests of national security. This would be a step back under any circumstances; it certainly is not a forward-thinking way of creating a successful new Department of Homeland Security. Moreover, the amendment allows the unions to arbitrate any attempt by the President to loosen the civil service rules governing promotions and dismissals. I think I need to be entirely candid on this issue: how many members of this body would feel good about these rules if it took us 5 months to hire a staffer and 18 months to fire an incompetent one? How many of us would stand up and support such a system if it affected the way we do business?

There is not one of us who would do that. And that is what we will get if we have the underlying bill.

In all honesty, I think it is time to bring this matter to a close.

I personally have seen how the majority has loaded up the tree with a bunch of Democrat amendments in an attempt to prevent a vote on the Gramm-Miller amendment. We intend to have a vote on the Gramm-Miller amendment, and the sooner the better. It may be that the majority will win on that amendment; it may be that they won't. But that is the nature of the process around here. We can't keep playing parliamentary games with homeland security. That is what is going on around here. That is the reason I have come to the floor. I don't come to the floor that often to raise Cain. And I am not raising Cain here, I am just speaking frankly.

I think it is time for us to get about voting on these two different aspects of the bill. We ought to vote on the Gramm-Miller bill. There will have to be a vote on it. We ought to vote on the underlying bill, if that is the case—the Lieberman bill. I am not objecting to that. I don't think our side is objecting, nor is our side filibustering. We just want to be treated in a decent, honorable fashion; that is, give us a vote on the Gramm-Miller amendment, or the Gramm-Miller substitute, to put it in better terms.

I get a little tired of politics around here, especially now that we are dealing with homeland security. That is what the President was criticizing. I hate to say this, but I saw the remarks of the distinguished majority leader earlier. It was on all three cable networks, as far as I could tell. Those remarks implied that the President was politicizing Democrats. That is not the case. The President did say we are muddling around here. He didn't say it in those terms. I will put it in these terms—muddling around with this homeland security bill instead of voting up or down and getting the job done.

That is what we need to do. We don't need to have any distortions of what the President said or what Vice President CHENEY said.

That is what I think, unfortunately—I am sure it was sincere and well intentioned—was a distortion, but it is still a distortion.

I think it is time we get rid of those types of attempts to have political games at the expense of a bill of this importance. That is what the President is driven by.

After seeing all the weeks that we have been on this bill, I think the President is justified in his criticism.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity to rise in support of the Nelson-Breaux-Chafee amendment which is a bipartisan compromise on homeland security.

I believe perhaps some clarification is in order because there seems to be some misinformation or misunderstanding about what this bill does.

My good friend from Utah said the amendment ties the President's hands. We have looked very carefully at existing authority that the President has in similar circumstances at this very moment. And it doesn't tie the President's hands.

I must say Nebraska is going to be playing Texas at Texas A&M. My good friend from Texas is my hunting partner. Senator GRAMM is not going to move the goalposts down in Texas when we play A&M. We are not going to move the goalposts on Texas when Texas plays in Lincoln. I don't think it is about moving goalposts in athletic events. But I believe on this amendment we have had the goalposts moved on us.

Just recently, while I was presiding, Senator GRAMM, in talking about the Lieberman bill, referred to the fact that it was too restrictive on the President's authority in the area of collective rights and bargaining rights, or in terms of civil service protection. At that point, he believed it tied the President's hands in dealing with these very important issues when it comes to national security.

It was partly as a result of his comments at that time that I thought we would try to find a compromise that could deal with the situation.

Let me read from some of Senator GRAMM's comments that he made on the floor, I believe, just last week.

He was talking about the fact that when we decided to federalize inspectors at airports, in that bill we gave the President power in terms of personnel flexibility to hire and fire, and we gave him the ability to get around the normal procedures that require up to 6 months to hire somebody. Then he goes on to say we have done that same sort of thing in the Federal Aviation Administration.

Then he goes on and references the Internal Revenue Service. I quote:

> I ask my colleagues: If we believed that the current system was failing us in the Internal Revenue Service and that we had a problem which required a different approach and more flexibility with regard to our sensitivity at the Internal Revenue Service with people who know our intimate financial information and who look at our tax returns. If we believed that flexibility to administer that Department was necessary—and we did, and we adopted it and it is the law of the land today—I wonder what people back home would think when we said we thought flexibility was required at the Internal Revenue Service. . . .

In other words, he says what we did in the Internal Revenue Service reorganization was OK.

That is what he said last week.

Well, lo and behold, because of his commitment to that particular flexibility, that is exactly the kind of language and that is the reference we have in this amendment.

If it was good enough for last week, it seems to me it ought to still be good enough for this week and next week and the week thereafter.

So if this isn't moving the goalposts, it is at least shifting around on the answers. And I believe that what was good enough last week, and what is good enough for the Internal Revenue Service to deal with flexibility, is good enough for homeland security.

Then the White House, through various spokespersons, has raised a question about whether the President's hands would be tied with what we are proposing.

But lo and behold, Governor Ridge—who took advantage of me with a bet on the Penn State-Nebraska game, which I shall pay him very vividly for—went ahead and said something in his letter to Senator LIEBERMAN that I thought was important.

This is in his letter dated September 5, 2002:

> Senator, the President seeks for this new Department the same management prerogatives that Congress has provided other departments and agencies throughout the Executive Branch. For example:
>
> . . . personnel flexibility is currently enjoyed by the Federal Aviation Administration—

And guess what—

> the Internal Revenue Service, and the Transportation Security Administration.

I do not know what has changed since September 3 or last week, because we thought this would be acceptable,

given the fact that the President needs the kind of historic personnel flexibility he is seeking.

So for those who said we are changing the laws, or we are somehow restricting the Presidential authority, or tying the President's hands by changing the law, apparently they have not focused on what the current status of the law is because they are asking for what we are trying to provide them at the present time.

Now, I don't know whether someone hasn't read the amendment, but some of the criticisms I have heard of the amendment would indicate they saw a previous iteration. It seems to me the current state of affairs with our amendment would be directly on point or on all fours with what has been asked.

So I am very anxious to see if we can get a clarification because I think it has to be some sort of a simple mistake. I cannot believe that we have been asked to do something, or it has been suggested that this would be OK, and then, when we offer it, that somebody cannot take yes for an answer. I hope this will be clarified.

It is also important to say that binding arbitration and personnel flexibility is part of the IRS Restructuring and Reform Act of 1998, which both Governor Ridge and Senator GRAMM have suggested was OK. So it seems to me that whether it was binding arbitration, personnel flexibility, or, in the case of Presidential authority, in terms of exempting union membership, union employees, from collective bargaining membership, we have done exactly what others have been asking us to do.

So it seems to me that if the people are as anxious as they seem to be, both in the administration and on the other side of the aisle, to get the Gramm-Miller amendment considered, the first step is to pass or at least have a vote on Nelson-Breaux-Chafee because it will, in fact, give us an opportunity to have that vote, and I think another vote shortly thereafter, if necessary, on Gramm-Miller.

I do not know what more a person can do today than give the other side the kind of answers they are seeking and the kind of solution for which they have been asking. I hope this will be clarified. If there are some misunderstandings—as I think it may be a simple misunderstanding—I hope some other people will show up and respond to what we have put out there at this point in time.

Very often, misinformation, a lack of information, mischaracterizations, and things such as that can drive the day. I hope they do not drive this day. National security is too important, and passing this homeland security legislation is of the utmost importance.

So for those who are suggesting there is any effort to delay it or in some way tie the President's hands, this simply does not do it. It is consistent with existing law, and it gives the President ample authority to do what the President needs to do for personnel, for collective bargaining, and for breaking the logjam in the homeland security debate, which is so important to the future of our country.

Passion runs deep: passion about Iraq, passion about homeland security, passion about getting something done as quickly as possible. I hope we can use that passion as a basis to accomplish something.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. JOHNSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. KYL. Mr. President, I rise to speak for a little bit of time until Senator NICKLES from Oklahoma arrives, and ask unanimous consent that he then be permitted to speak.

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

Mr. KYL. Mr. President, I simply want to respond, very briefly, to what I saw this morning on the television when I was observing the activity on the floor.

I saw the majority leader come to the floor and give what I thought were very intemperate remarks suggesting that—not suggesting—demanding that the President of the United States apologize, allegedly for politicizing the war effort.

My belief, after looking at all of the transcripts of the comments that were attributed to the President and the Vice President—and I have them all right here, as well as the newspaper accounts of the same—it suggests to me that it is not the President but the distinguished majority leader who needs to apologize.

I say that because it is very clear the President has not politicized anything with respect to this war. The comments in which he criticized the Senate—and I believe rightly so—have to do with our failure to adopt a homeland security bill. And he referred to the special interests that have been involved in impeding action on the bill, and complained about the fact that the Senate has not followed the leadership of the House and passed a bill.

As a matter of fact, earlier today the Senate precluded a vote on the President's plan. When Senator GRAMM sought to have an opportunity to vote on the President's plan, that was turned down.

So we have a situation in which the Senate, for the fourth week now, is debating the homeland security bill—has not passed it, will not even let the President have a vote on his proposal—and the majority leader suggests the President is politicizing national security.

The President is right to complain about that. But what the President did not do was to connect any activity of the Senate, or Democrats in the Senate—or anybody else, for that matter—to the war effort, as was inferred by the majority leader.

The majority leader attempted to take quotations that dealt with homeland security and transform them somehow or other into criticism of Democrats in the policy with respect to Iraq. And that simply is not true. It did not happen. For that reason, as I say, it seems to me the majority leader ought to be the one offering the apology, not the President.

I had been talking, just before watching this, about the damage that was being done to the attempts by the President to reach an international consensus in developing a plan for dealing with Iraq by the comments of German Chancellor Gerhard Schroeder during his election. And both Dr. Rice and Secretary Rumsfeld have noted the fact that those comments were not helpful and poisoned the atmosphere.

They poisoned the atmosphere internationally by, in effect, confirming what Saddam Hussein is saying, that the President is acting out of political motives rather than out of a desire to achieve peace in the world. When the distinguished majority leader comes to the Senate floor and seemingly validates those same criticisms of the President, he is further poisoning the atmosphere.

That is another reason why he owes the President an apology. He is literally politicizing the issue in a way that is destructive to the President's attempt to achieve an international consensus.

I find it ironic because it is the other party that has sought to assure the President would gain that consensus internationally, many of them suggesting that is necessary before we act, and then that very attempt is being undermined as a result of the comments made here.

Mr. ROBERTS. Will the Senator yield?

Mr. KYL. I am happy to yield.

Mr. ROBERTS. I ask the Senator from Arizona if he is aware, along the same vein of comments that were made by the distinguished majority leader in reference to the Vice President—I share the same concern he has mentioned—is the Senator aware when the Vice President was in Kansas, basically they are accusing the Vice President of politics in regard to the Iraq debate in urging an audience in Kansas to vote for a GOP congressional candidate?

Mr. KYL. I am aware of the fact the majority leader alluded to that. But he was only looking at a headline in a newspaper. I know the Senator from Kansas was actually at the event.

Mr. ROBERTS. I would respond to the Senator by simply indicating, there is nothing that hurts the truth more than stretching it.

I understand if somebody reads a headline and gets upset about it. I would, too. But the headlines I have

from the Kansas press—and the Senator is correct; I was at the meeting and introduced the candidate. The candidate introduced Lynne Cheney, the wife of the Vice President. The Vice President gave a very standard speech. Here is the headline, ''Cheney Talks About Iraq at Congressional Fundraiser.'' He said that our candidate would be ''an effective voice for Kansas, a fine addition to your State delegation, which is already one of the best in the country,'' which I appreciated. But I find nothing here that has anything to do with politics.

And then here is another one, ''Fundraiser for Taff Draws 500.'' From the Kansas City Star, ''Cheney Talks Tough at Taff Fundraiser.'' But the two things were separated. It was a very sobering discussion on the policy of preemption and what we face in Iraq.

As a matter of fact, the Vice President, in a private session, said the Congress ought to be asking tough questions, which we are, and urged bipartisan support. I heard every word. For the life of me, I just did not hear that kind of inference at all. I wanted to come to the floor—I thank the Senator for yielding to me—to indicate that simply was not the case. If we are into a situation where we are inferring we are trying to politicize this effort, that is not the case with the Vice President. We can't be in the business of the security of the American people and sending wrong messages to Saddam Hussein unless we get the facts straight.

In doing that, I am not trying to perjure the intent or the concern of the distinguished majority leader. It just did not happen. I wanted to set the record straight.

Mr. KYL. I appreciate that from the Senator from Kansas. I know the majority leader this morning a little bit later, in talking to reporters in response to a question, said he was relying upon the newspaper accounts of what had been said. But I suggest that while that might ordinarily be all right, the press can make mistakes, and when you are accusing the President of politicizing a war effort, you better be correct. We have gone back and actually looked at the stories, and the Senator from Kansas makes a point, too. The Vice President is a very careful person. He is not prone to politicizing things.

I will conclude by saying it is very important for us to keep our eye on who the enemy is. The enemy is the terrorists. The enemy is Saddam Hussein. The enemy for none of this is President Bush. I don't think we should be raising questions or throwing around allegations that undercut what ought to be a common effort from everybody in this country as well as this body to ensure we have the kind of consensus that will enable us to prosecute whatever war we prosecute in a way that enjoys both support in the United States and abroad. The kind of tirade entered into here this morning undercuts that effort. It does not assist.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I ask unanimous consent to add 10 minutes to the time allocated to me under the order.

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

Mr. VOINOVICH. Mr. President, I rise today to talk about the Lieberman homeland security bill, the Gramm-Miller amendment, and the Nelson-Chafee-Breaux amendment to that amendment.

Before I do that, I will comment on the fact I am really disturbed at what I see going on here in the Senate in terms of the President of the United States. Our President has more on his plate than perhaps any President in my memory. He has the Middle East situation. I have been studying that for 20 years. That is more fragile than I have ever seen it during my lifetime.

We are in Afghanistan. We have forgotten we are there. That is a major undertaking. We are trying to work diplomatically to make sure Pakistan does not go after India and India after Pakistan, which could embroil us in a nuclear situation.

We have a problem with Saddam Hussein in Iraq. We have a domestic economy in bad shape today. People in this country are losing faith in our financial markets. We are in a very fragile, shaky period.

What we should be doing in the Senate is rallying to the cause to try and be as supportive as we can of the President, who is trying to rally the world and the United Nations and our allies in dealing in a responsible way with Saddam Hussein, who has thumbed his nose at us for so many years and has set up a new paradigm in terms of the United Nations where they will work together to make it very clear they will not tolerate people such as Saddam Hussein.

I was going to say it is business as usual in the Senate; I just wish it were business as usual. I hope my colleagues on both sides of the aisle will start to understand the American people are watching what we are doing here, and it is important that we behave in a way that gives them confidence that we are more interested in moving our country ahead than we are in partisan politics.

HUMAN CAPITAL AND THE FEDERAL WORKFORCE

Mr. VOINOVICH. Mr. President, since my election to the Senate in 1998, I have given top priority to a public policy issue that seldom gets the attention it deserves: The challenges of our Federal Government's civil service system.

For nearly 4 years, I have used my position as a member of the Governmental Affairs Committee and chairman and ranking member of the Oversight of Government Management Subcommittee, to focus the spotlight on this critically important issue. As I learned more about the condition of our Federal Government's personnel system, it became crystal clear we are in the midst of a human capital crisis in the United States Government, one which will only get worse unless this Congress acts decisively to address it.

What is it? Is it real? Why do we have it? The human capital crisis is, simply stated, the inability of the Federal Government to properly manage its workforce. Robust personnel management includes the ability to recruit the best candidates, hire people in a timely manner, award performance bonuses and other motivational tools to encourage retention, provide training and professional development opportunities, and the flexibility to shape a balanced workforce.

Good management includes the flexibility to act quickly and to compete as an employer of choice in the fast-paced 21st century knowledge economy.

Unfortunately, at present, the Federal Government's ability to use such tools is not what it could be. By now, we have all heard the statistics, and maybe some of my colleagues have not heard them. The average Federal employee is 47 years old. By 2005, more than 50 percent of the 1.8 million person Federal workforce will be eligible for early or regular retirement.

Even more incredible is the fact that by 2005, 67 percent of the Senior Executive Service will be eligible for regular retirement, and an additional 21 percent will be able to retire early. This is an astounding 88 percent of our top-level workers, managers, department heads, and division chiefs.

I was talking to businesspeople this morning, and they said: ''Explain to us what this is about.''

I said: ''Consider your own businesses. Say during the last 10 years you were eliminating employees without any regard for how that would affect your mission, or how high-tech manufacturing and information technology has changed your business. Then imagine half the remaining people working in your plant are going to retire soon. Then imagine that about 88 percent of your top managers are going to retire also. Where would you be today?'' They got it.

I remind my colleagues, this dire predicament refers to what could happen in the next 2 to 3 years, but it is virtually impossible to predict accurately the amount of experience and institutional knowledge that is literally going to walk out the door at the end of this decade.

Some may ask: Is the human capital situation really that important? Is it really a crisis in the Federal Government?

Consider some additional evidence we have learned from officials in some of the agencies that handle national security and finances, such as the CIA, FBI, FEMA, Social Security Administration, and Department of Commerce.

CIA Director George Tenet, in recent congressional testimony, said within 3

years, between 30 and 40 percent of his workforce will have been there for less than 5 years.

According to a recent GAO report, more than 70 agencies have foreign language needs, and staff shortages at those agencies, such as the FBI, ''have adversely affected agency operations and hindered U.S. military, law enforcement, intelligence, counterterrorism, and diplomatic efforts.''

Mr. President, do you remember after 9/11? The call went out: We need people who can speak Arabic and Farsi. Incredible. Ten years after the Persian Gulf war, we remain actively involved in the Middle East, yet we do not have enough people who speak Farsi and Arabic in the FBI, the State Department, or the CIA.

At FEMA, retirements have accelerated since 9–11–2001 as employees have reevaluated priorities, and nearly 50 percent of the remaining workforce will be eligible for retirement in the next 18 months.

According to a recent Federal Times survey of more than 2,200 managers at our Social Security Administration, dramatic downsizing in the ranks of managers and front-line employees has hurt training, caused burnout, strained resources, reduced managers' effectiveness, and created disconnects between headquarters and field offices, all at a time when the agency's workload is skyrocketing.

According to GAO, the Department of Commerce is unable to effectively monitor U.S. trade laws with foreign countries due to a shortage of staff with the right expertise.

Mr. President, the evidence is clear. The Federal Government has a serious human capital crisis. That is why I have sought information from some of the best minds in the country over the past few years in public policy and management, and why I have spent so much time listening to the people closest to the problem.

Furthermore, Mr. President, I believe that if a Federal agency or department is important enough to receive the hard-earned tax dollars of my constituents and yours, we have a moral responsibility to see to it that the people's money is spent wisely. Outdated personnel practices and lack of training not only put agencies at risk of not being able to fulfill their mission and provide needed services to the American people, this also represents wasteful Federal spending. We simply must provide the flexibility agencies need and give them the right tools to do their work.

I have sought to attract attention to this issue at every opportunity. My subcommittee held 10 hearings from July 1999 to March of 2002. Two of those hearings were held by Chairman DURBIN, and I thank him for his willingness to work with me on this issue.

Earlier this year, Senator AKAKA held 2 days of legislative hearings on civil service reform. I also recognize his leadership and partnership on this issue. I sincerely appreciate their assistance in raising the profile of our pressing human capital challenges.

Also, in December of 2000, just before our new President took office, I released a comprehensive report on this subject ''The Report to the President: The Crisis in Human Capital'' which summarized our subcommittee's activities during the 106th Congress and made recommendations to the incoming administration on how to address the Government's human capital challenges.

Mr. President, I want you to know I have not been alone in my assessment of the situation. In 2001, Comptroller General of the United States David Walker designated human capital on the General Accounting Office's ''High-Risk List.'' In the past, other areas that were on the list, such as the Y2K problem, the 2000 census, the Superfund Program, and the Department of Agriculture's farm loan programs, received attention and priority, and they no longer threaten the operations of the Federal Government. As Congress did with these issues, we must prioritize human capital; otherwise, this crisis will persist.

Dr. Joseph Nye, Dean of Harvard University's Kennedy School of Government, one of the top public policy schools in the Nation, also identified the Federal Government's human capital crisis as a critical issue. The problem truly hit home for his academic institution. During the nineties, increasing numbers of Kennedy School graduates, despite their top-notch graduate level training in public policy, chose employment in the private and nonprofit sectors rather than work for the Federal Government.

Dr. Nye noted he did not want the Kennedy School to be known as the second best business school in Cambridge! As a result, he organized a series of executive sessions during the 2001–2002 academic year, bringing together approximately 30 leaders on human capital management from the public, private, and nonprofit sectors: For example, professors from Harvard, Stanford, Wharton, CEOs, and former senior officials at the Departments of Treasury, Labor, Office of Federal Procurement Policy, and Office of Management and Budget. I attended three of the four sessions and found them productive and insightful.

In addition, the U.S. Commission on National Security in the 21st Century, a bipartisan group chaired by former Senators Gary Hart and Warren Rudman, released a series of reports providing a comprehensive evaluation of our national security posture.

We have been talking a lot about national security, haven't we? Their reports included many recommendations on homeland security which we are considering in this bill that is before the Senate. The Commission's final report concluded as follows:

> As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in Government.

Unprecedented crisis.

> The maintenance of American power in the world depends on the quality of the U.S. Government's personnel, civil and military, at all levels. We must take immediate action in the personnel area to ensure the United States can meet future challenges.

Furthermore, in his testimony before our committee, former Defense Secretary and member of the Commission James Schlesinger added:

> It is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.

Mr. President, yet another poignant illustration was offered by FEMA Director Joe Allbaugh when he testified before a Senate committee earlier this year. I note FEMA is one of the key agencies in the proposed Homeland Security Department. In describing his workforce needs, Director Allbaugh said:

We have not been spending enough time internally on our employees. Before 9/11, retention was a problem and there was essentially no recruitment. Over the next 18 months, nearly 50 percent of our agency is eligible for retirement, and since 9/11, retirements have accelerated. The people who worked at Ground Zero came to my office with a different perspective on life. They want to spend more time with their kids, grandkids, and spouses.

I think these comments represent the feelings of many Federal employees, and Director Allbaugh's testimony calls attention not only to the urgent need for reform of our civil service laws, but also for a completely new mindset for considering the Federal Government's personnel requirements and workforce culture.

Mr. President, if that is not a compelling call to address this issue, I do not know what is. Despite all the evidence that significant human capital challenges exist in the Federal Government, this issue has not received the attention it deserves. To its credit, the Bush administration has taken steps to raise the profile of this issue. In fact, strategic human capital management is one of the five governmentwide issues targeted for reform in the President's management agenda, which was released in August of 2001.

Having recently marked the 1-year anniversary of the horrendous and unprecedented terrorist attacks on the United States on September 11, the Senate is considering legislation designed to reorganize our Federal Government in a way that will help our Nation prevent future such attacks.

Suddenly, in the context of this debate, civil service reform is the issue du jour. It is an issue which for years has not been substantively addressed except when agencies become dysfunctional. It is now front and center in the consideration of the most important

Government reorganization to take place in our Nation in half a century. It is about time.

In the debate over homeland security, we have backed into this personnel issue that has demanded attention for so many years. At least we are finally taking the first step to address the problem by having a debate on the subject. We are talking about personnel practices and the people who make a difference for the Government and deliver the services.

Unfortunately, however, this debate is limited to the proposed Department and not to the needs of the entire Federal Government. The entire Federal Government needs new flexibilities. Congress last enacted major civil service legislation for the entire Federal Government 24 years ago in 1978. In today's fast-paced, high-tech world, the 1970s represent almost prehistoric times when people were still using typewriters and the only computers were mainframes. To operate effectively, the Federal Government cannot afford to revise its personnel laws only every quarter or half century. The basic classification and compensation system for the Federal Government dates back to World War II, when the professionals in the civil service had jobs as clerks and typists and were at GS levels 2 and 3. Today's civil service professionals are typically GS–12s and GS–13s. So much has changed over the years, and changing times require new thinking and new laws—policies that allow flexibility in our Federal Government civil service system.

The intellectual basis for one of the areas I have sought to reform, competitive hiring, dates back to the Grant administration! Back then, our soldiers were using single-shot, repeating rifles, the telegraph was cutting-edge communications technology, and the primary mode of transportation was the horse! That was when we started the ''rule of three.''

I know of no successful business anywhere in the world that is using a personnel system based on management theory that is more than 50 years old, or which dates from the Industrial Age.

During the 107th Congress, I have worked with some of the Nation's premier experts on public management to determine what new flexibilities are necessary to create a world-class 21st century workforce, and to draft legislation based on their insights. These individuals include some of our colleagues in Congress, including Senator AKAKA; officials of the Bush administration such as OPM Director Kay Coles James; former OMB Director Sean O'Keefe, who now heads up NASA; Clinton administration appointees who spent a lot of time on this, including Steve Kelman, the former Administrator of the Office of Federal Procurement Policy; and Elaine Kamarck, a domestic policy adviser to then-Vice President Gore—this is a bipartisan effort; Federal employee unions such as the American Federation of Government Employees, with their president, Bobby Harnage, and the National Treasury Employees Union, NTEU, and their president, Colleen Kelley; representatives of public policy organizations such as the Council for Excellence in Government, Partnership for Public Service, Private Sector Council, Brookings Institution, National Academy of Public Administration, and the Volcker Commission; and subject experts in some of our country's top educational institutions, including Dr. Jack Donahue of Harvard's Kennedy School of Government.

I was especially attentive to the concerns of unions, making several significant changes to my draft legislation since last summer to allay their uneasiness with some of its flexibilities. I felt it was important. As someone who dealt with 25 unions when I was mayor, and with 5 unions when I was governor, I know it is important that unions be at the table and that their input be taken into consideration.

We made changes that include new language to clarify that the intent of my proposed early retirement and buyout authority is workforce reshaping, not the downsizing of the 90s; as well as the revision of removal of provisions that enjoyed strong support from other stakeholders, including the establishment of a public/private exchange program to cross-pollinate good management ideas between sectors of the economy.

In other words, we tried to accommodate the concerns of our union representatives.

Finally, Mr. President, I note that my bill was the subject of a letter to Chairman LIEBERMAN and other members of the Governmental Affairs Committee, a letter of support for the legislation was signed by 29 Kennedy School executive session participants. By combining my reform proposals with those of the administration, both of which I introduced last fall, I was able to develop a package of consensus human capital reforms that I believe will have a positive impact on the Federal Government's personnel management.

On June 20, along with Senators THOMPSON and COCHRAN, I introduced that consolidated bill, S. 2651, the Federal Workforce Improvement Act, a measure that is designed to get the right people with the right skills in the right jobs at the right time.

In July, during its consideration by the Governmental Affairs Committee, working with Senator AKAKA, I successfully amended key provisions of this bill to the homeland security legislation, and I really appreciate the bipartisan support we received for those changes. I am grateful to Senator AKAKA for that. I only wish we had put more of S. 2651 into the homeland security bill.

I hope as we wrap up homeland security—at least I hope we wrap it up, my colleagues will conclude we should adopt the rest of the provisions of S. 2651 in this important legislation.

Let us get it done all at once. The provisions we have already included will have an impact not only on the new Department but on all Federal agencies. The Voinovich-Akaka language will help the Federal Government begin to address its human capital challenges, challenges that extend far beyond the corridors of the proposed Department of Homeland Security. These flexibilities are not as comprehensive as what we were proposing for the new Department, but they represent a good start on the path of reform in this critical area that has not received adequate attention by past administrations or Congress.

It does the following: Creates Chief Human Capital Officers at the Federal Government's 24 largest departments and agencies, officials who have responsibility for selecting, developing, training and managing a high-quality workforce; establishes an Interagency Chief Human Capital Officers Council chaired by the OPM Director, to advise and coordinate the personnel functions of each agency and meet with union representatives at least annually; requires OPM to design a set of systems, including metrics, for assessing agencies' human capital management, something that has been largely ignored; reforms the competitive service hiring process, allowing agencies, consistent with merit principles, to use an alternative category ranking method for selecting new employees instead of the ''Rule of 3,'' making the process more efficient and fair, a practice that has been very successful at the Department of Agriculture for the past decade; provides governmentwide authority for offering voluntary separation incentive payments and voluntary early retirement, buyouts and early-outs, for the purposes of workforce reshaping, not downsizing. This authority, which I was able to secure with legislation 3 years ago, is currently being used effectively on a limited basis for civilian employees at the Department of Defense.

It also lifts the total annual compensation cap for senior executives, allowing performance bonuses to be paid in full in a single year; and it reduces restrictions on providing academic degree training to federal employees, thereby emphasizing the importance of individual professional development.

In light of the fact that there has not been government-wide civil service reform in a quarter century and, as the Hart-Rudman Commission noted, personnel is the basis for maintaining national security, it is absolutely appropriate that this legislation be included in the bill to create the Department of Homeland Security.

I thank Senators GRAMM and MILLER of their willingness to consider my proposals which represent extensive efforts to address the Federal Government's personnel challenges during my 4 years in the Senate, and for including the Voinovich-Akaka language in their substitute amendment. I believe it is a

strong addition that also has the administration's support.

As I said, I hope we'll be able to add the balance of S. 2651 to the homeland security bill before we conclude this debate, because these reforms are badly needed.

The Homeland Security Department is not the first, and not the last, agency that needs to have greater flexibility. Even more comprehensive flexibilities and reforms, similar to those proposed in the Gramm-Miller substitute for the Department of Homeland Security, which I will describe in a moment, are needed at other agencies as well, including the Department of Defense and NASA. These agencies may provide the impetus for Congress to return to this issue next year.

In fact I asked Senator WARNER and Senator LEVIN, when they were considering the Defense Authorization bill, to give consideration to accepting some personnel flexibilities that the Department of Defense wanted. I know from Secretary Rumsfield that they will be coming back asking for those flexibilities.

It is my hope that the incremental provisions I have developed with my colleagues and a diverse group of stakeholders over the course of the last year will assist the rest of the federal government while we consider next steps.

I would like to take a few moments now to discuss the personnel provisions in the Gramm-Miller substitute that apply specifically to the new department. I have worked with Senators GRAMM and MILLER on these provisions and believe this language will provide the Department with the tools it needs to get the job done, and at the same time respects the rights of those union workers being transferred into the new department.

I say this because I am close to the leadership in both of our major unions. They have some concerns. I tried to get the administration to sign an Executive order continuing partnerships between unions and the Federal Government. Unfortunately, this did not happen. The administration also included competitive sourcing on the President's Management Agenda, setting targets that each department had to meet in order to receive a green light on the Management Scorecard. I said, if you tell an agency head that he must outsource 10 percent, 15 percent, 20 percent—instead of trying to shape his department with the people he has and give them training, he will spend all his time figuring out how he is going to outsource those jobs.

The proposed Department of Homeland Security will merge nearly 170,000 employees from more than 20 Federal agencies. This is a momentous undertaking. Although the creation of the Department of Defense in 1947 combined a larger number of civilian and military employees, the consolidation we are now contemplating would require more than a score of different workplace cultures and personnel systems to be effectively harmonized, all while the Nation entrusts this new department with the one of Federal Government's most urgent and important missions: to preserve the homeland and protect American citizens from harm. In order to accomplish this very tall order, the President and the new Secretary of Homeland Security will need new flexibility, and I believe Congress should authorize it.

In recent years, however, Congress has engaged in management by scandal, only granting more flexibilities when agencies under-perform! For example, the FAA, IRS and SEC each received special personnel authorities over the last decade, but only after each of these agencies was singled out for its failure to achieve its mission.

The Bush Administration has correctly pointed out that we cannot wait for a similar occurrence at the Department of Homeland Security, and it has justifiably sought broad flexibility for the new department before any mission failures occur.

On a related matter, Mr. President, it is interesting to note that the recommendations of the Hart-Rudman Commission form the intellectual basis for large portions of the underlying legislation we are debating today. Yet, while we are paying close attention to the Commission's recommendation to establish a new Department of Homeland Security, we are not seriously considering its recommendations to modernize the civil service system. We simply must take these necessary steps now.

The personnel provisions in the Gramm-Miller substitute represent a good-faith effort to modernize the personnel system for the new department.

The Quinn-Portman amendment would preserve employee rights, including hiring and promotion based on merit and equal pay for equal work, and would protect employees from improper political influence and reprisal for whistle-blowing. Employees would still be protected from prohibited personnel practices, such as illegal discrimination, politicization of the hiring or promotion processes, and violation of veterans' preference requirements. I notice my friend, Senator AKAKA was talking about the fact that whistle blowing is not involved in the amendment. We specifically talk about protection of employees against reprisal for whistle blowing.

Furthermore, employees would still have the right to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.

First, the substitute features House-passed language proposed by Representatives JACK QUINN and ROB PORTMAN. In June, the President sent to Congress a blueprint for the personnel system he envisioned at the new department. The President realized that Congress would flesh out many of the issues in his proposal, and that is just what happened. The House-passed version is less flexible than what the Administration originally requested—it is really important to understand that—but it is designed to deal with the personnel flexibility sought by the President, and to address the collective bargaining rights that many of our colleagues seek to protect.

The Quinn-Portman amendment retains most of title V's provisions. This is not as broad as Transportation Security Administration to which Congress gave blanket exemptions from title V last November.

The language also requires that the new department collaborate with unions and other employee organizations in creating its personnel system. In addition, it includes procedures to ensure that exclusive bargaining units are represented by individuals designated by the union itself. It also provides certain safeguards for employees as the proposed department develops a new system for employee appeals.

In order to ensure that the new human resources management system is developed in collaboration with the unions, the Quinn-Portman amendment provides for direct involvement by employee representatives in three stages of the development process.

In the first stage, as the human resources management system is being designed, the Secretary and OPM Director must provide a written description of the proposed system or adjustment to the system; allow each employee representative at least 60 days to review and make recommendations on the proposal; and give any such recommendations full and fair consideration in deciding whether or how to proceed with the proposal.

At the second stage, when the Secretary and OPM Director decide to implement a human resources management proposal, they must, prior to implementation: give each employee representative details of the decision along with information upon which the decision was based; give each employee representative an opportunity to make recommendations; and give such recommendations full and fair consideration. If any employee representatives' recommendations are not proposed to be implemented, the Secretary and Director must explain why.

During the third stage, once a human resource management system proposal is implemented, the Secretary and OPM Director must develop a method for each employee representative to participate in any further planning or development.

The Quinn-Portman amendment also fleshes out the Administration's original proposal by providing necessary flexibilities in six key areas: performance appraisals, classification, pay rates and systems, labor-management relations, adverse actions, and appeals. Each of these areas would be open to modernization, subject to the explicit limitations included in the language to protect employees, which, as I have

just delineated, are comprehensive, and rooted in current civil service law.

We currently have pending a second-degree amendment to the Gramm-Miller amendment from Senators BEN NELSON, CHAFEE and BREAUX.

They would like to reduce the six areas of flexibility to four. I happen to believe that the administration, in order to create this new Department, is going to need those six areas of flexibility to get the job done.

Based on my experience as mayor and Governor, I thought it also would be a good idea to have the Secretary negotiate as opposed to consult with union representatives in the six areas in which the administration is seeking flexibility. My belief in that regard comes about as a result of my experience over the years. In other words, after the consultation and the negotiation occurred, there would be an impasse panel that could be appealed to for a final decision.

I thought that would be helpful because it would make the negotiation more robust and there would be fewer areas of disagreement. Once it was over, the parties could say the matter was taken to a third party and decided. That is the way it should be decided.

In other words, and I want to point out to my colleagues, the success or failure of the administration to get the job done is going to depend on the relationship they develop with our labor unions and other Federal employee organizations. If there is consensus, if there is openness and a sense of fairness, this will be a great success. On the contrary, if it is an adversarial relationship, one that is not open, one where we don't have the discourse that we need, it will be a failure.

I have reorganized as Governor. I have combined departments as Governor. And I have found that the only way you can be successful is to work with organized labor on a consensus basis and work things out. Without working things out, it will not be a success. I have brought this to the attention of the administration several times. I am confident that with the process that is in the Gramm-Miller amendment, the process will be open and fair.

I have talked to Kay Coles James, Director of the Office of Personnel Management; I have talked to Mark Everson, Deputy Director for Management at OMB, and many other people. They understand that they have to build trust with the unions if they expect to have a successful Department. If they don't work together and achieve a consensus, we are in big trouble.

Finally, the Gramm-Miller substitute includes the House-passed language proposed by Representatives CONNIE MORELLA and CHRIS SHAYS—with an additional provision that I have recommended. This language would, for the first time, limit the current authority of the President to exclude an agency or agency subdivision from participation in a collective bargaining unit.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has as a primary function intelligence, counterintelligence, investigative or national security work and that permitting the entity to have union organizations would be inconsistent with national security requirements and considerations.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has a primary function of intelligence, counterintelligence, investigative or national security work, and that permitting the entity to have union organization would be inconsistent with national security requirements and considerations.

I want to make this clear to my colleagues.

The Morella-Shays language would limit the President's current authority only with regard to the new department. It would prohibit the President from using the exclusionary authority unless the mission and responsibilities of a transferred agency materially change and a majority of the employees within such an agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism.

The language does provide, however, that the President could waive the above limitations on his authority if he determines in writing that their use would have a substantial adverse impact on the department's ability to protect homeland security.

Senators GRAMM and MILLER have agreed to add language that I proposed requiring that, when the President executes his authority under the Morella-Shays language, he must notify Congress of the reasons for his determination at least 10 days prior to the issuance of his written order.

What our unions are worried about is arbitrary and capricious action on the part of the President exempting members from membership in their unions.

This language basically says that we, for the first time, in the Homeland Security Department, will limit that power of the President, and if he exercises it under Morella-Shays, it means his decisionmaking will be subject to a filing in Federal court as to whether he has abused his discretion in exercising that power.

This is very important. If he decides to waive it and says, no, I don't want to do it by Morella-Shays, I want to go ahead and exercise my power, that basically says the President has to put it in writing, and send it to Congress. The unions will see it, the majority will see it, the minority will see it, the media will see it, and public personnel experts will see it. I have tried to convince some of my colleagues that this process is open to public scrutiny.

I have to say to my colleagues, how can you ask this President of the United States—at a time when we have a national security crisis—to give up the same authority held by all other Presidents since 1962—when we create this new Department of Homeland Security?

The fact that this administration has agreed to set up criteria and limit the President's authority to certain specific reasons for exercising it—to then say to the President, by the way, you can't do that now. To say, 'you have to send it to Congress 10 days in advance' is more than enough limitation on this historic executive authority. I say to my friends on the other side of the aisle, I say to my friends in the unions, that, first of all, I don't believe this President is anti-labor or trying to short-change or treat our employees improperly.

Second of all, even if he thought of doing something like that, or somebody recommended it, he would have to explain the rationale in writing, and allow it to be held up to public scrutiny 10 days prior to his order taking effect.

Mr. President, I have been one of the leaders on civil service reform during the last two sessions of Congress. I believe I have probably dedicated more time than any Senator to addressing the Federal Government's personnel interests. I have tried to raise the profile of this issue and then work in good faith with all interested parties to develop solutions. Based on my work, I want my colleagues to know I believe the personnel provisions in the Gramm-Miller substitute can go a long way towards putting personnel management in the executive branch back on track.

I just hope that somehow in the next couple of days we can work something out on both sides of the aisle so that people feel comfortable that we can protect the rights of organized labor and at the same time give the President of the United States the authority and the flexibilities he needs to get the job done.

I hope that after this debate is over, the well is not so poisoned that when the administration and the unions begin to sit down and talk with each other, they can work together to arrive at a consensus so that this reorganization can be successful and fruitful, and we can achieve what we all want to achieve to secure our homeland.

Thank you, Mr. President. I yield the floor.

Mr. REID. Mr. President, I say to my friend from Ohio, who I think is such a good legislator—

Mr. VOINOVICH. Could the Senator speak a little louder? I am wearing a hearing aid.

Mr. REID. I was saying nice things about the Senator. I will be happy to speak louder.

I was telling my friend from Ohio, who is such a good legislator, I would like to at a subsequent time today make a unanimous consent request that we vote on cloture on Gramm-Miller tomorrow. It is now set for Friday.

We want to move this legislation along. I think that is what we need to do.

The Senator doesn't need to respond to that at all. I just wanted to let him know that we hope to work something out in the next couple of days. I hope we can work something out tomorrow. We want to move this legislation along.

I have to say this: Having been on this bill for the fourth week, I am concerned that maybe people down on Pennsylvania Avenue don't want this bill. We have done everything we can to move this legislation. It doesn't appear that people on the other side of the aisle want it moved.

For example, Senator BYRD's amendment was pending for several days. At any time, Senator BYRD's amendment was subject to a motion to table. Everyone knew there were enough votes to table that amendment. But for days, the minority chose not to do that.

So I hope that I am wrong. I hope that I am wrong. I hope that there are as many on your side of the aisle as on our side of aisle who want this legislation to pass. But I have the feeling now, I say to my friend from Ohio, is that the minority does not want to move the homeland security bill.

We will see in the next——

Mr. VOINOVICH. Mr. President, I say to the Senator, I beg to differ with the Senator from Nevada. We do want to move forward with this homeland security bill. We do want it to pass. We know how necessary it is for the President to have this new Department, with the flexibility he needs to merge more than 20 agencies.

From my perspective, I cannot figure out why the Majority has been filing cloture motions on some of these amendments, when I think they could make a motion to table instead. I am still trying to figure that out. I may need to get the Parliamentarian to explain what this is all about.

But I can assure you, that after the time I have spent on this issue with many of my colleagues, including many on the other side of the aisle, we want this to move forward.

We would like to have a vote up or down on the President's amended proposal, which is contained in the Gramm-Miller amendment. We would like to have a vote on the recommendations from Senators NELSON, BREAUX, and CHAFEE, and see where the Senate stands on that amendment.

We have to move this along. We cannot go home, I think, without getting this done. I know this has gotten to be pretty partisan. But I honestly believe that if we can sit down and start talking about some of this a little bit more, we could work something out and move ahead.

I assure the distinguished Senator from Nevada that we are not delaying this. We want to move forward. And I will certainly do anything I can to help cooperate in this regard.

But we want a vote on the Gramm-Miller amendment. We also want a vote on the amendment of Senators NELSON and CHAFEE and BREAUX.

Mr. REID. I would simply say—the majority leader is here, and I don't want to take a lot of time—the majority of the Senators over here want a bill. I am confident a majority of the Senators want a bill. This is the fourth week we have tried to do it.

We are trying very hard. We should be able to do it. It appears to me that some people cannot take yes for an answer. We are willing to give a vote on the amendment offered by the Senator from Texas, but he says he does not want a vote unless he can have the first vote. It is just a lot of what appears to me, and I am sure to the people in Nevada and the public, to be a lot of silliness.

We want to move forward with this legislation. As the Senator from Ohio has said, you want it passed. We want it passed. Hopefully, we can do something. But it appears we are not getting impetus from the leadership on your side of the aisle and the White House to get this done.

I am sorry to have taken the leader's time.

The PRESIDING OFFICER (Mr. MILLER). The majority leader.

Mr. DASCHLE. Mr. President, parliamentary inquiry. Who controls the floor?

The PRESIDING OFFICER. Nobody controls the floor at this time.

The majority leader is recognized.

Mr. DASCHLE. Mr. President, I do not want to interrupt the statement of the Senator from Ohio.

Mr. VOINOVICH. Mr. President, I don't see anybody else seeking recognition on my side of the aisle. I yield the floor.

Mr. DASCHLE. Mr. President, I came to the floor for a couple of reasons. One was to reiterate what I think I heard the assistant Democratic leader say with regard to our desire to have a vote. As we have indicated publicly and privately, we are prepared for an up-or-down vote. We want a vote on the Nelson-Breaux amendment. And once that vote is taken, we are more than willing to vote on the Gramm amendment. So there should be no question about that.

I think I heard the Senator from Nevada say that there are some who cannot take yes for an answer. We are prepared to offer that vote any time. I would hope that our colleagues on the other side of the aisle would take our offer in the manner in which it was intended. We hope to have a vote up or down on that particular amendment.

## NO ''CONTEXT'' JUSTIFIES QUESTIONING THE PATRIOTISM OF OTHERS

Mr. DASCHLE. Mr. President, the other matter I wanted to come to the floor to discuss is the reaction to some of the comments that I made this morning.

A number of our colleagues have come to the floor and, as I understand it, the administration has stated that if I had understood the context in which the President made those remarks—the remarks that Senate Democrats are not concerned about national security—that I probably would not have been so critical. In fact, they criticized me for having criticized the President.

Mr. President, what context is there that legitimizes an accusation of that kind? I don't care whether you are talking about homeland security, I don't think you can talk about Iraq, you can't talk about war, you can't talk about any context that justifies a political comment like that.

This is politicization, pure and simple. I meant it this morning and I mean it now. I don't know what may have motivated those in the White House to make the decision to politicize this debate, but it has to stop. There is no context within which anybody can make that accusation about people on this side of the aisle on an issue relating to homeland security, or Iraq, or defense, or anything else.

So let's get that straight. I would hope that we can finally bring this debate to a level that it deserves.

I can recall in 1991 and 1992—especially in 1992—when President Bush made the decision he did. I can recall several of my staff coming to me, suggesting that we say this or that. But never once did I have someone on my staff, someone here in the Senate, refer to the politics of the war with Iraq.

I remember sitting at my desk, handwriting my speech, explaining to my people in South Dakota, and to whomever else might be listening, why I made the decision I did. I did not make that decision for political reasons. And I don't think there is a person in this Chamber who did.

We need that same level of debate this time if we are going to have a debate, if we are going to do it this close to an election.

So I want all the apologies at the other side of Pennsylvania Avenue, all of these explanations about ''context'' to be taken for what they are worth. They are not worth the paper they are printed on.

The time has come for us to quit the explanations, to quit the rationalizations, to quit the politicization, and do what we should do as Americans: Make our statement, make our judgment, have a debate, and send as clear a message to Saddam Hussein as we can. We are not going to tolerate his actions. And we, as a country, will build on a coalition to do the right thing.

I hope this will be the last word. I look forward to talking directly with those in the White House, those on this side of the aisle, as we fashion our response, as we take this matter as seriously as we should, as we do it in a way that lives up to the expectations of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, in many ways, this has been a very hard day. I thank the majority leader of the Senate, TOM DASCHLE, for the remarks he just made and for the remarks he made earlier today. He actually spoke in defense of the Senate.

Anyone who knows TOM DASCHLE—and I think most people around here do—knows that TOM DASCHLE is a very soft spoken man. They know that TOM DASCHLE does not rise to anger or fights, if ever, very often. Therefore, one has to really look at why this occurred.

In my mind, this is not an isolated example of what has been happening. It is a continuum of what has been happening, starting with Andrew Card, the President's chief of staff, who, when asked, why didn't you start discussing this this summer, if you were ready to move such a resolution in October or September, answered, in essence: You don't roll out a new product in the summer.

This kind of thing just seems to continue. We have the Vice President campaigning and essentially saying to the campaigns of the Republican candidates: Gee, we really need you because the Democrats won't help our war effort.

I don't know where this President has been, but I have heard many Democrats, including, for example, the individual presiding in the chair, indicating their support. We are an umbrella party. We do represent different views. Frankly, it makes our party stronger. Everyone wants to go after Saddam Hussein. Everyone wants to get rid of those weapons of mass destruction. We may have a different path to get there. Some of us may want to go it alone and give the President the authority he asks for. Some may want to go with our allies. Some may want to see more U.N. resolutions, as the British have said they want.

The bottom line is, this makes us a strong party. Frankly, it makes us a strong Nation. I have heard members of the President's party express some concerns.

What TOM DASCHLE did was essentially come to the floor and defend the honor of the Senate and this democracy. Why did he have to do it? In today's paper, and also on television, we have seen this quote reiterated over and over. We have the President of the United States saying that the Senate is ''not interested in the security of the American people.''

I know of no one in the Senate, Republican or Democrat, who has slept well after 9/11. I know of no colleague on either side who doesn't think about it every day: How do we protect our people; how do we make the airlines safer; how do we protect this country from chemical warfare; how do we protect ourselves from a possible smallpox epidemic; how do we protect our nuclear powerplants; how do we protect our people night, day, in the air, on the ground? I don't know many Members in this Chamber on either side who have ever slept as well as they did before 9/11, who don't wake up in the middle of the night thinking about it or turn on the radio at 6 or 7 a.m. and pray that there isn't something there.

This kind of statement, that the Senate ''is not interested in the security of the American people,'' is very hurtful. It is hurtful to this institution. It is hurtful to our democracy. It is, in particular, very hurtful because I have talked to my colleagues who served in Vietnam or who served in World War II or even some in Korea. Nobody asks in the military, Are you registered Democrat or Republican?

This is a horrible turn of events. If we don't express ourselves, it is dangerous for our country to put partisanship ahead of being unified as a nation, standing for the rule of law, for free debate, for discussion, for tough debate. That is good for this country. We have a lot of points of view out there. Everyone in this country needs to know that somehow, some way, somewhere their voice is being heard, not being stifled. Because if you dare to say something that questions anything, whether it is this homeland bill, which is a major reshuffling, the biggest reshuffling of the Federal Government in many years, since the creation of the Department of Defense, if you dare say, are we doing the right thing, are we taking our time, if you dare say that, you will find yourself being criticized in the middle of a campaign.

That isn't right. Of course, we will disagree on certain issues. That is the strength of this Nation. People died for that right. When Senator DASCHLE came down here and said he thought it was important to get an apology, I believed that apology should have been given. Not saying, well, we didn't mean this had to do with Iraq. It had to do with something else.

The statement stands on its own—it could be applied to anything—''the Senate is not interested in the security of the American people.'' That is why Senator DASCHLE came to the floor. That is why Senator DASCHLE for a moment even lost his voice, because he was so filled with emotion.

He looked behind him at Senator INOUYE who lost a limb in World War II. He thought of other colleagues who lost their limbs fighting for this country, who faced the posttraumatic stress of Vietnam, who came home and had to deal with that. Are the Vietnam vets Democrats? Are they Republicans? Are they Independents? I can't tell you that. But some of them are homeless. We need to stand united because they faced a war at a time that our country was divided. We need to make sure we give full debate, not some open-ended resolution.

I sat through a hearing today at the Foreign Relations Committee. It was a very important hearing. We had Ambassador Holbrooke there and Robert McFarlane. We had a Democrat and a Republican. We had a very important debate.

Many different viewpoints were reflected on both sides of the aisle. Some were saying: We are ready. They were ready to give the President whatever he needed, whatever he wanted, now, ready, today, go. Others on both sides of the aisle said, as I said: Where are our allies? Would we be in better shape to go in after another U.N. resolution? I asked: Is there a path to peace? Is there some way we can avoid the bloody war that may ensue? Is there a path to that peace? Let's talk about it. If we must have a war, what is this President's intention following that war? These are important questions.

One question that never was raised by anyone in that committee was: Is anyone on this committee motivated by anything other than patriotism and wanting to do what is right for this country, whether they support the resolution or they do not; whether they support the resolution of the White House or a resolution that may be written by some other Republican or Democrat? No one ever suggested that anyone of either party sitting in that hearing did not have the best motivation at heart for our country.

It is extremely disheartening when we hear the statement of Andrew Card that basically says: We did not want to roll out our new product—meaning resolution—in the summer, talking about it as if it was toothpaste or a new car. It is about life and death.

If anyone says: Excuse me, what is it going to cost us in lives, in blood, in treasure, that person ought to be respected, not told they do not believe in the security of the people, whether it is questioning the homeland security bill or maybe a better way to do that or questioning an open-ended, blank-check resolution which I think has come over and I personally cannot support. The people in my State are telling me they do not want me to support it. They do not want me or Senator DASCHLE to come here and not speak what is in our hearts, in our souls, in our minds.

Senator DASCHLE did a very brave thing today. He did something I believe we do not see often enough in politics today. He spoke from his heart. He spoke the truth, unvarnished. He did not go through a committee. He did not bring it to a political adviser.

Mr. SCHUMER. Will the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. SCHUMER. I thank the junior Senator from California for her remarks which I think are right on point.

Mr. President, I would like to ask the Senator a couple questions. First, she was there, as I recall, as I was, when Senator DASCHLE came into our meeting this morning—there were maybe seven or eight Senators—and read the remarks. All of us were stunned and furious. We were just so upset that not a policy debate but, rather, a sort of below-the-belt hit was being made not only by political operatives but by the President himself when he said people are not for national security.

I have been asked by reporters: Was this a calculated move?

I said: No; you should have been there and just seen the reaction.

I remember the junior Senator from California, the senior Senator from New York, and some others of us urged him to go to the floor and to just speak his mind. He was saying to others: Maybe I ought to reflect on it. No, you should speak what you think.

I think it is clear, and I have been talking with people in my State, that the President has stepped over the line with these remarks. This weekend, I was asked by many people way to the left of me: Isn't the President, when he wants to go into Iraq, using politics?

I said: No, I don't think so. I think he has been wanting to go into Iraq from the very beginning.

Then for him to accuse Democrats of using politics, in my judgment—and I wonder what the Senator from California thinks because she has spoken in a heartfelt, compassionate way—I think the American people are fundamentally fair, and ugly tactics like that will backfire on their own, but I also believe it has to be pointed out because war is serious stuff and we need unity. We do not need political games.

Senator INOUYE said it best. I just ask the Senator if she is finding the same thing in her State as mine; that people are not sure, they want some questions asked before we go into war, and people do not like one party accusing the other of not being patriotic or being less concerned about national security simply because they ask questions. I wonder what the Senator's opinion is.

Mr. REID. Will the Senator from California yield for a parliamentary request?

Mrs. BOXER. I certainly will.

Mr. REID. Mr. President, we are on H.R. 5005; is that right?

The PRESIDING OFFICER. That is correct.

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate go off the homeland security bill and proceed to a period for morning business, with Senators allowed to speak for a period not to exceed 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. REID. My understanding is the Senator from California wishes to speak for how long?

Mrs. FEINSTEIN. Twenty minutes.

Mr. REID. The Senator from California, Mrs. FEINSTEIN, for 20 minutes following the statement of the Senator from California, Mrs. BOXER.

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

## HOMELAND SECURITY

Mrs. BOXER. Mr. President, let me respond to my friend from New York. The phone calls, letters, and e-mails we have been getting have been one-sided against an open, blank-check resolution, as they are phrasing it, as was sent over. They are very much against what the President sent over.

More importantly are my conversations with my constituents. They clearly are very pleased that Senator FEINSTEIN has made remarks regarding Iraq, and I have spoken out. I have received calls now because I raised a number of questions in the Foreign Relations Committee regarding working with our allies, working through the U.N., asking: Is there a path to peace here?

What I pointed out is in recent years, I have voted for two resolutions to go to war: One was to stop the genocide by Milosevic, that was with a Democratic President, and one with current President Bush to respond to the brutal, inhumane terrorist attack on 9/11 for which every single Democrat in this particular body voted.

To me, it is not a question of will I ever vote for such action. It is a question of what is the best way to proceed. My constituents want to hear what I am thinking. I have been in Congress for 20 years. They do not want to see debates where one party is saying to another: You do not care about the American people. My friend is so correct. They look to us to engage in a rational debate, not to have one-line zingers as the President put out. This is not what they want.

Then Ari Fleischer, who is the press secretary for the President, said this today:

> It's time for everyone to work well together to protect our national security.

That was his remark after he was questioned about the President's statement.

That is the point that Senator DASCHLE was making, but not as rhetoric, as fact. There is an expression, I believe it was John Adams said: Facts are stubborn things. The facts are this President said very clearly: The Democrat-controlled Senate "is not interested in the security of the American people." My people at home are appalled at that.

Mr. CORZINE. Mr. President, will the Senator yield?

Mrs. BOXER. Yes, I will continue to yield to both my colleagues.

Mr. CORZINE. I want to reinforce what the Senator from New York said. By the way, this statement about not being interested in the security of the American people was made in Trenton, NJ, on Monday at a political rally. It is hard for me to understand what special interests are being reflected in the President's comments and its repeated nature.

I wonder if the junior Senator from California actually knew this was made in Trenton, NJ, at a political rally for the competitor to our side of the aisle? Is that not political in and of itself?

Mrs. BOXER. I say to my friend, I learned of this quote reading the front page today of the Washington Post, and I am going to read what it says. It says four times in the past 2 days Bush has suggested that Democrats do not care about national security, saying on Monday that the Democratic-controlled Senate is "not interested in the security of the American people."

His remarks, intensifying the theme he introduced last month, were quickly seconded and disseminated by Republican House majority whip TOM DELAY of Texas.

I was unaware of this, although it is interesting to me, because that particular race, of course, in New Jersey, which is pivotal to the future of this Senate, and adds to the political nature of this comment.

Mr. SCHUMER. Will the junior Senator from California continue to yield?

Mrs. BOXER. Yes.

Mr. SCHUMER. I believe my friend was here when I was back in 1991. There was a long debate. I think it was a debate on the merits.

Mrs. BOXER. Yes.

Mr. SCHUMER. Both sides debated strongly in a heartfelt way. The Nation voted to go to war. Whatever side you were on, it seemed to me by having the debate, by keeping the invective aside—I do not remember the previous President George Bush ever using lines like that. After the debate, the vote was close, I believe, in both bodies. It certainly was in the House. The American people were more unified. There was a feeling that everyone had their point of view, that everything was explored.

I would say to my friend from California, at every townhall meeting about Iraq, and I have had a bunch of them around the State, they say you must know something we do not know. There must be some secret.

I have attended a few of the classified briefings and obviously would not want to disclose what is in there, but I say to them, no, as to the basic broad facts, not any kind of detail that would involve security, but the basic broad facts are known to every American because they are in the newspapers. There are no hidden, deep, dark secrets, at least that I am aware of. Maybe there are that we do not know about. But in a democracy, you cannot go to war this way. You cannot say if you are a leader of the country, I know something you do not know, when you are sending the sons and daughters of America to be put in harm's way.

I do not know how I would come out if we had to vote today, but whether I would end up voting yes or no—and I do not know what the resolution would look like—I sure would feel bad if we did not have a debate, if we did not have a discussion, if a whole variety of questions were not asked.

I would like to hear my friend's opinions on this. This is the most awesome, humbling decision that a Member of the Senate or the other body can make, because you are putting the beautiful young people of America in harm's way. You have to be careful.

I am not a pacifist. I can think of a whole number of wars in our country's history where I would have enlisted. I would have been lined up the next day.

I would not say that first strikes should always be ruled out, but I sure want to ask some questions and I sure want to know some answers. This idea of trying to impugn the patriotism, in the interest of helping the American people, of anyone who wants to ask questions, I find, well, too low for words.

I ask the junior Senator from California if she has the same feeling. I come from New York. I know what terrorism does. I knew people who were lost. I put this flag on September 12, and I have worn it every day since then in memory of those who were lost. God willing, I am going to wear it every day for the rest of my life.

I know what terrorism is all about. Nobody wants to beat back terrorism more than I do, but I want to make sure we do it and we do it right. I want to make sure if we go to war in Iraq we are not going to ignore or take resources away from, for example, fighting al-Qaida or other terrorist groups. Perhaps we can do both, but I have not had a chance yet to get all the answers about that. I wonder what the Senator thinks.

Mrs. BOXER. I say to my friend, he is absolutely right.

I want to say for the benefit of my senior Senator for California, I will be talking another 5 minutes and then I will yield.

I want to underscore that what the Senator says is so right. After that debate that took place on the first gulf war, about 80 percent of the American people said they were so proud. Clearly, they may not have agreed with my position, your position, or any other Senator on the other side of the debate, but they saw debate free and open, respectful debate, among colleagues, asking questions, posing ideas, other solutions, other paths to resolve the issue.

In some cases, there was strong support for the President. They realized then that we are a representative democracy. They were calm.

When I went home this past weekend, I found out the people in my State are not calm. They are very agitated, and it is because they are worried that debate is being stifled. They are worried that a resolution is——

Mr. MILLER. The Senator has used her 10 minutes.

Mrs. BOXER. When Senator REID made the request, he did not apply the 10 minutes to this speaker, but I ask unanimous consent to continue for 5 additional minutes before Senator FEINSTEIN proceeds.

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

Mrs. BOXER. The people at home are agitated, I say to my friend, because they expect to see this respect go both ways between the parties and even, frankly, within the parties. We have Republicans who are asking questions and others who are not. We have Democrats who are ready to vote today for the Bush resolution and others, such as myself, who frankly could not because I believe it is a blank check.

I thank my friend for his engagement in this colloquy. Let me conclude in this way: I have thought to myself, why is this happening? I believe there is a political decision that has been made to keep this country focused on the foreign policy questions and not focused on the everyday kitchen table issues, the domestic issues that need to be addressed. I am going to go to some charts very quickly.

We have seen long-term unemployment more than doubling since this administration came in. We have seen the worst performance of the stock market since Hoover. That means pensions are going down the tubes, as well as 401(k)s, and people's hopes and dreams for their retirement. We have seen an average rate change in the real gross domestic product, which is the worst in generations. It is the worst of all Presidents from Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, the first George Bush, and President Clinton. It is the worst growth rate. That is what we have seen.

In summing up the economic record, we have seen record job losses, weak economic growth, declining business investment, falling stock market, shrinking retirement accounts, eroding consumer confidence, rising health care costs, escalating foreclosures, vanishing surpluses, higher interest rates on the horizon, raiding Social Security, record executive pay and a stagnating minimum wage.

So I believe that a decision was made to deal with a foreign policy issue at the exclusion of what is happening on the ground with our families. Mr. President, that is distressing. We need to do both.

We need to rise to the foreign policy challenges we face. On the war against terrorism, we have a long way to go. In Afghanistan, in Pakistan, right here, with the cells that exist in our country, we have a long way to go. We need to step to the plate on that fight. We need to step to the plate on the Iraq challenge and handle it correctly with our allies, with a plan that will lead us perhaps to a peaceful end without having to shed blood. Maybe there is a chance. We should at least explore it. We have to step to the plate on the economic issues and we need to do that across party lines. We have to do it with the Republicans, with the Independents, with the Democrats—together.

One course we do not want is for one party to say about the other: They don't care about the security of the American people. If one party does that, as the Republicans did today, as the President did, as reported today, we will lose all these other battles. We will have a divided country. We will not be able to work together in good will.

My leader, TOM DASCHLE, the leader of the Senate, was right to say what he said, was right to express himself in the way he did. I hope the answer will be that in the future we will join hands as Americans and, even where we might disagree on a strategy, on an amendment, on a bill, work together as Americans. That is when the people are most proud of us.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized for 20 minutes.

## IRAQ

Mrs. FEINSTEIN. Mr. President, I thank my friend and colleague, Senator BOXER, for her excellent remarks, and those Senators from New Jersey and New York who joined her. She has made a very impassioned message. It is a correct message. I hope people listen.

I also am deeply saddened by recent comments made by the President and Vice President which imply that Democrats are not protective of our Nation's security. Nothing is further from the truth.

There is no shortage of courage and bravery and patriotism on this side of the aisle. We, too, have our heroes who prove that: Senator MAX CLELAND, Senator DANIEL INOUYE, former Senator Bob Kerrey, and Senator JOHN KERRY, people who fought with bravery and distinction in major conflicts this Nation has had.

Even to imply the Democrats are not interested in the security of the American people is not only wrong, but in the present pre-election period I believe it is also base.

Last night, it was reported the Vice President went so far as to state that American security would be enhanced if a certain GOP candidate was elected to the House of Representatives. This very statement, carried by major newspapers, jaundiced any fair discussion in this pre-election period.

One might ask why? The reason is both the President and the Vice President have an extraordinary bully pulpit with a very long reach. It makes up about 95 percent of everything that reaches the American public; the remaining 5 percent is scattered among whoever is able to receive it.

If this debate is politicized in the heat of an election and the decision is made for the wrong reasons—out of fear; if we do not carry out the public trust that is invested in us and make the decision for the right reasons, then we betray our trust. And no election is worth doing that.

I share the concern of the majority leader, and I hope it is not too late to end this politicization. But there is only one way. Shortly, we in Congress will begin debate on whether to authorize the President the authority to use force against Iraq. It is, in effect, a declaration of war. The President has sent a draft resolution. He made his case before the United Nations. Today he

seeks the support of the international community. Now it is our job, our constitutional duty, to debate this resolution. But we must do so in an atmosphere that is true. The decision to go to war is perhaps the most grave and significant decision any nation makes. It is a decision that must be made on its own merits, with a timetable determined by the cause and the case and not based on political considerations and upcoming elections. I believe that deeply.

A declaration of war against Iraq is the most serious decision many Members will ever make as Senators. It is a life or death decision for the American men and women we put into harm's way, for the innocent Iraqi people who will be killed, for the repercussions it will have throughout the Persian Gulf, the Middle East and the Arab world, and throughout our own country and the rest of the world.

Congress must not rush to judgment before it has had ample opportunity to answer the many questions that still remain regarding why a war, a preemptive war, should be fought at this time against Iraq. For example, what is the immediate threat to American security to justify an attack on another sovereign nation? How would such a war be conducted? How would we respond to Iraq's use of chemical or biological weapons, to an attack on Israel, or to a ricochet of terrorist incidents in our country and around the world? And what are our responsibilities for postwar stability once Saddam Hussein is ousted? How do we prevent civil war between the Sunnis and the Shias?

No one questions that Saddam Hussein is an evil man, or the potential of Iraq acquiring the nuclear capability within the next 5 to 7 years is a possibility. We believe it is. There is reason to believe that Saddam Hussein has squirreled away biological and chemical weapons. But they are most likely close to civilians: in tunnels, under mosques, around schools and hospitals, and inside palaces or in mobile vehicles.

This is not sufficient reason to preemptively attack another sovereign nation—for the first time in this Nation's history—without first being provoked by an attack against our homeland, our people, or our interests. It is not sufficient reason to put our service men and women in harm's way when there are real, viable options short of war left on the table. There is no question this country should take steps to disarm Iraq. Saddam Hussein, with chemical and biological weapons, represents a real threat to his own people, to the Middle East region, and to the international security. The question is, Is use of force the first option or the last option? In my view, it should be the last. In my view, working with the international community, doing all we can to disarm Iraq before jumping to military force, remains an option.

If Saddam Hussein balks at inspectors, if he starts playing games, if he continues to thwart the will of the international community, then the use of force by the United States has a moral imprimatur and is the only remaining viable answer.

There is no question that Iraq is in direct violation of international law, numerous U.N. Security Council resolutions, and that he poses a threat in the region. Nobody debates that. But there is no persuasive evidence that Iraq is prepared to unleash its biological or chemical weapons today. Although he used them against the Kurds in 1987 and 1988, and against Iran in their decade-long war, he has not used them in over 10 years, and he knows what will happen to him if he does. He may be homicidal but he is not suicidal.

Likewise, there is no persuasive evidence that he possesses nuclear weapons today. He may be trying to gain these weapons, but he remains years away. So instead of rushing to war, I believe we should proceed in a calm, methodical, and nonpolitical manner. The United States should work through the United Nations Security Council—as the President himself suggested in a September 12 speech to the United Nations and as Secretary of State Colin Powell is now trying to do to obtain full and unconditional access for arms inspectors, and hopefully accompanied by a United Nations military force.

We should seek the complete destruction of Iraqi weapons of mass destruction and the means to deliver them. This approach should be our first option, not window dressing or an option to be dismissed out-of-hand. And we should do this not for idealistic reasons but because it is in our national security interests to do so.

Indeed, the benefit of pursuing a multilateral approach was seen clearly when Saudi Arabia suggested that, if the United States were working through the United Nations, it would grant U.S. forces access to its bases. Action against Iraq becomes much more complicated, from a military perspective, if there are no landing or flyover rights in other Arab countries; and managing the aftermath becomes much more difficult if we find the entire Arab world against us.

So I believe that if the United States fails in its efforts to compel Iraqi compliance with a United Nations inspection, verification, and destruction regime—either because other countries threaten a veto in the Security Council or the United Nations is unable to muster the muscle and will to enforce its own resolutions—then the United States, with or without willing partners in the international community, must be prepared to go it alone.

But we must be clear. If we go to war, it should be to force Iraq to disarm.

This time, too, it is critical that the United States stays the course on the war on terror.

In every book you read on Osama bin Laden, you see that he believed that we would never stay the course in a war against him. We would hit a camp once and then disappear. As happened before, we would go to Somalia, get into trouble in Mogadishu, and we would turn tail and run. Bin Laden bet on that. He cannot be right about that. We have much to do to win this war.

Many of those who perpetrated the September 11 terrorist attacks remain at large, including two-thirds of the al-Qaida leadership; the Taliban and its leader, Mullah Omar; not to mention thousands of terrorists sympathetic to al-Qaida worldwide, including in our own country.

Afghanistan remains a fragile and unstable country. The United States must continue our efforts to rebuild this country. We cannot repeat what was done to it since 1979. We must continue our efforts to rebuild Afghanistan, the Afghan economy, to assure that the Taliban and al-Qaida do not return to power there—because they will if they can. We must protect and stabilize the Government of Hamid Karzai. And any effort in Iraq must not detract from our war on terror.

The President has rightly pointed out that the war on terror will be a long and hard-fought battle, and it is not just against al-Qaida. It is Hezbollah, which equals al-Qaida in its reach, in its viciousness, in its malevolence, and its evil. We must not take our eye off this ball. The President must come forward to explain not only how we fight this two-front war without allowing one front to jeopardize our interests in the other, but also what we would do in the event of a major strike against Israel.

I have come to this floor before and indicated that there is ample evidence that rockets are being shipped out of Iran, through Syria and into southern Lebanon—Katyusha rockets with extended range anywhere from 8,000 to 10,000, to hit Israel's industrial zone north of Haifa, should we attack Iraq.

What do we do then? What is our commitment, and what will the other Arab States do? I think we ought to know this. I think as prudent leaders, as part of a debate in the greatest deliberative body in the world, we ought to know these things before going into it, so there are no surprises.

Finally, it is critical that if and as we consider any use of force against Iraq that we have a clear understanding of the aftermath. Who would do the rebuilding? Who would pay for it? Who would run any new government? And could that government provide security? Could it prevent a bigger and more brutal battle between the Sunni and the Shia.

That is not a question to overlook. Read the history on Iraq. You will see the brutality and the viciousness, the attack of one tribe on the other that has characterized Iraqi history from the time of ancient Mesopotamia. There are a lot of grievances out there to be settled, big grievances between the Shia majority and the ruling Sunni Baath party minority.

As General Shalikashvili made clear in his recent testimony before the Senate Armed Services Committee, planning for a post-conflict situation, winning the peace, is every bit as important as planning for the conflict itself.

And until the planning for post-war Iraq is in place—and it is not now—we should not rush to initiate combat. In fact, every general with whom I have talked—and I have talked with several—has urged caution. Every general with whom I have talked, privately, believes this war could end up being much more difficult than some expect it to be.

So to simply rush ahead and authorize the President to use force now, before these questions are answered, and without an imminent threat—save what some hope to gain from this issue in the elections—would be a grave error.

Congress must debate these issues fully, thoroughly, on a schedule, and with a timetable driven only by the merits of the issues. We must then move forward to pass a resolution tailored to the specific circumstances and giving the President the proper authority he needs to safeguard U.S. national interests.

So much is at stake here. American lives are at stake. We do not know how many, but I know one thing: It is not going to be like the gulf war. This war will be in cities. This will be street to street and house to house. We might send in the B–2s, the B–52s and the 117s, and they might drop huge numbers of laser-guided missiles and precision bombs. We will kill a lot of people. And then do we risk what may happen with the chemical and biologicals squirreled away? Do they go up in those attacks? Or are they released over innocent people? I have never heard one person discuss this, and it is time that we do so.

We are not a mercenary nation. This is not our heart. It is not our soul. And we have never engaged in a preemptive attack on another sovereign nation.

It may well be that untold numbers of lives are at stake elsewhere in the Persian Gulf, in the Middle East, and yes, right here in the USA.

Matters of war and peace, of life and death, must not be held in the grip of shortsighted, partisan rancor. I for one refuse to make them so. I respectfully suggest the Administration do the same. The stakes are simply too high.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BROWNBACK. Mr. President, I ask unanimous consent to speak as if in morning business for up to 10 minutes.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. BROWNBACK. Thank you, Mr. President.

## THE VICE PRESIDENT'S SPEECH IN KANSAS

Mr. BROWNBACK. Mr. President, I rise to discuss an issue that has been in the press much today, and I think there is a great deal of misinterpretation taking place about the President's and the Vice President's comments regarding homeland security and the war on terrorism.

I make specific reference to a speech that Vice President CHENEY gave in Kansas on Monday. I was at that event. I heard the speech. I was there supporting the candidate for whom the speech was given. Adam Taff, a fine candidate, is running for Congress in the Third Congressional District in Kansas. I want to make it very clear—and I want to enter into the RECORD a copy of the Vice President's words verbatim.

I ask unanimous consent that a copy of the Vice President's speech which he gave on Monday in Kansas be printed in the RECORD.

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

REMARKS BY THE VICE PRESIDENT AT LUNCH FOR CONGRESSIONAL CANDIDATE ADAM TAFF, SEPTEMBER 23, 2002, KANSAS CITY, KANSAS

THE VICE PRESIDENT: Well, thank you very much, Adam. And thanks for the kind words, and for the opportunity to be here with all of you today. It's good to be back in Kansas, and standing next to the next Congressman from the Third District. (Applause.)

I'm also delighted today to get the opportunity to spend a little bit of time with Sam Brownback and Pat Roberts, two great United States senators. (Applause.) I know—of course; Pat was up here talking before we came on, and somebody came in and said, you know, you've got to get right down there, Senator Roberts is running out of things to say. (Laughter.) I knew better. (Laughter.)

It's always fun to get a chance to travel with my bride, and spend a little bit of time out on the campaign trail, doing important work. I often explain to people that we have a Republican marriage, that if it hadn't been for that great Republican victory in 1952, when Dwight Eisenhower was elected President, that our lives would have come out very differently. In 1952, when Eisenhower got elected, I was living in Lincoln, Nebraska, with my parents, just a youngster of some, I guess 11 years old at the time. But he came in and reorganized the Agriculture Department—my dad worked for the U.S. Soil Conservation Service. Dad got transferred to Casper, Wyoming. We moved to Wyoming. I met Lynn—we went to high school together, grew up together, got married, celebrated our 38th wedding anniversary last August. (Applause.)

But I explained to a group of people the other night that if it hadn't been for that Republican election victory, that Lynne would have married somebody else. She said, right, and now he'd be Vice President of the United States. (Laughter.) There's no doubt in my mind that what that's true. (Laughter.)

Of course, my job now as Vice President—my only job, actually, as Vice President—is to preside over the Senate. And when they wrote the Constitution they decided they needed a Vice President, somebody to backup the President in case something happened to him. But at the end of the constitutional convention they realized they hadn't really given the Vice President anything to do. So, finally, they settled on making him the President of the Senate, so that he could preside over the Senate and gave him floor privileges, as well.

And John Adams, of course, was our first Vice President, the first President of the Senate. And he presided and he also used those floor privileges—got up and could actually participate in the debate and speak to the issues of the moment and argue for and against the majors on the floor. And then he did that a couple of times and they withdrew his floor privileges. (Laughter.) And they've never been restored. (Laughter.)

But one of the things I do get to do is to swear in the new Senate every January. And I'm enthusiastically looking forward to next January, when I can swear-in Pat Roberts and the new members of a Republican-led Senate in January.) (Applause.)

We've got a lot of races here in Kansas this year. Of course, a new Secretary of State, Ron Thornburgh, I think will do very well. Congressman Jerry Moran, who has proved to be a great member of the House of Representatives. And, of course, the next Governor of Kansas, Tim Shallenburger. (Applause.)

And I bring greetings to the people of Kansas from President George W. Bush.

We're all here today because there's an important race for Congress in the third district—and we've got a tremendous candidate. This seat belonged for many years to a great lady and a close friend of Lynne's and mine. We all admire Jan Meyers for her integrity and devotion to duty. (Applause.)

I served for ten years in the House, most of that time with Jan and explained to people, of course—it was a special kind of arrangement to be the congressman from Wyoming, since there was only one congressman from Wyoming. It was a small delegation. (Laughter.) But it was quality. (Laughter.)

But our nominee that we have for the third district today follows very much in the tradition that January established for this district. Adam is a first-class candidate; a distinguished Naval aviator who has carried out missions in many parts of the globe; a citizen actively involved in the life of his community; and a person who understands the need for limited and effective government.

He'll be an effective voice for Kansas, and a fine addition to your Republican delegation—already one of the most talented we have in Washington. The election is just six weeks away, and there's a lot of work ahead. And I am here today to make absolutely certain that Adam Taff is the next congressman from the third district in Kansas. (Applause.)

The President and I look forward to welcoming Adam to the nation's capital come January. He'll be vital in helping us meet the key priorities for the nation—in terms of winning the war on terror, strengthening the economy, and defending our homeland.

For the economy, this administration's goal is for faster growth and for more jobs for American workers. Even in the face of the major challenges—from the terrorist attacks to recession—the economic picture is nonetheless promising. Worker productivity has grown. Interest rates remain low. Inflation is under control. Personal income has continued to rise. And the economy continues to expand.

All of these factors set us on a path for long-term growth and prosperity. And if we

continue the positive direction President Bush has set for the nation—with solid, pro-growth, pro-job reforms—Americans will enjoy even greater prosperity in the years ahead. But we will not be satisfied until every sector of the economy—from agriculture to high-tech—is vigorous and growing. And we will not rest until every person in America who wants to work can find a job.

We'll see more growth and new jobs when Congress passes the President's energy policy—a policy that encourages efficient technology and conservation, and increases production here at home. Especially in times like these, we must pass a comprehensive energy bill, and reduce America's dependence on foreign oil.

We'll see more growth and new jobs when people around the world have more opportunities to buy things that are made and grown here in America. Under President Bush's leadership, Congress has passed trade promotion authority, signed into law just recently. The President will use that tool to open up new markets to our country's farmers, ranchers, and manufacturers.

Congress has also followed the President's lead in passing a new law to protect investors, to bring more accountability to corporations, and to ensure tougher oversight in the accounting profession. Our country has the most productive, creative, and promising economic system the world has ever known. The President's reforms will bring out the best in that system, and make it even stronger and better than ever before.

Americans can also count on President George W. Bush to continue working to reduce the federal tax burden. Last year we passed the biggest taxpayer relief package in a generation. As enacted, however, those reductions stay in place only for a time, and then expire in the year 2011. Even the death tax is scheduled to rise from the dead that year. For the health of the economy—and for the well-being of every taxpayer—we need to make the Bush tax cut permanent, and enforce spending discipline in Washington, D.C. (Applause.)

Some in that city need reminding that every dime the government spends was earned and sent in by someone else. And we have a responsibility to help keep spending under control. In a time of war and recession-induced deficits, we need to show extra care in our spending priorities, and the discipline that fits the times. The President's budget commits most new spending to national security and to homeland defense, and seeks to hold the rest of government to an increase of two percent. Were spending to grow without restraint, billions more would be diverted from families and entrepreneurs, limiting the economy's ability to expand in the future. President Bush is going to insist on spending discipline in Washington—and, if necessary, he'll use the veto power to protect the American taxpayer.

Another responsibility the President takes very seriously is the job of placing qualified, common-sense judges on the federal bench. (Applause.) The Senator has a responsibility of its own—to give every nominee a prompt hearing and a vote. The Democratic leadership has refused to do so. Dozens of judgeships sit empty, while many of the President's judicial nominees have waited for more than a year for the Senate Judiciary Committee to even give them the courtesy of a hearing.

In nominating judges President Bush chooses men and women of experience, judicial temperament, and good judgment—people who respect the Constitution, and understand the limits of judicial power. The Senate should move to confirm the President's nominees for the federal courts, and they should do so without wasting another day. (Applause.)

As we look to the agenda for the fall, we are keeping first things first. The most important responsibility we have, as Adam mentioned, is to protect the American people against future attack and to win the war that started on September 11, 2001.

This has been a period of testing for the United States. The American people have met that test. We are united. We understand the threats that have formed against us. We are determined to protect our country. And we will prevail.

In the past year, we have captured many terrorists, and frozen the assets of many terror groups and front organizations. Our people in law enforcement and intelligence, working under the most urgent and sometimes dangerous circumstances, have disrupted terrorist plots here and abroad. At home, we are reorganizing the federal government to strengthen our ability to guard against further attacks. And of course in Afghanistan—where so many terrorists were housed, armed, and trained—we have shut down the camps, and liberated an entire nation from the Taliban regime. In the case of Osama bin Laden—as the President said recently—''If he's alive, we'll get him. If he's not alive—we already got him.'' (Laughter.) That's a Texas phrase, I guess. (Laughter.)

Every bit or progress we've achieved, all of us appreciate that we are still closer to the beginning of this conflict than to its end. The President and I begin each day with a briefing on the threats facing the country. There is little doubt that our enemies are determined to do further significant harm to the American people. Nine-eleven and its aftermath have given us a clear picture of the true ambitions of the global terror network, as well as the growing danger of weapons of mass destruction.

In that changing environment, as always, we must take the facts as they are, not as we wish they were, and we must think anew about the requirements of national security. In the days of the Cold War, we were able to manage the threat with strategies of deterrence and containment. But it is a lot tougher to deter enemies who have no country to defend. And containment is not possible when dictators obtain weapons of mass destruction and are prepared to share them with terrorists.

We have already found confirmation that the al Qaeda terrorists are seriously interested in nuclear, chemical and biological weapons. At the same time, there is a danger of terror groups joining together with regimes that have or are seeking to building weapons of mass destruction. In the case of Saddam Hussein, we have a dictator who is clearly pursuing these capabilities—and has used them previously, both in his own against Iran and against his own people.

The government of the United Stats must not look the other way as threats gather against the American people. We are consulting with Congress and with our friends and allies around the world about the course of action. In his speech to the United Nations General Assembly, President Bush made clear to the international community the kind of challenges we must face together.

The President reminded the U.N. that Saddam Hussein made a series of commitments after his defeat in Desert Storm—and that he has broken every one of them. Saddam agreed to cease at once his repression of his people—yet the systematic violation of human rights continues in Iraq to this day. He agreed to return all prisoners from Kuwait and other lands—yet more than 600 are still unaccounted for, and one American pilot—a Kansan named Scott Speicher—is among them.

Saddam Hussein agreed to renounce all involvement with terrorism, and to permit no terrorist organizations to operate in Iraq. Yet Iraq continues to shelter and support terrorist organizations. Dissidents abroad are targeted for murder. The Iraqi regime has attempted to assassinate the Emir of Kuwait and a former President of the United States.

Saddam Hussein promised the United Nations that he would destroy and cease further development of weapons of mass destruction and long-range missiles—and that he would submit to unrestricted inspections. He has flatly broken these pledges, producing chemical and biological weapons—aggressively pursuing a nuclear weapons program—and working to develop long-range missiles. And for four years now, he has refused to admit U.N. inspectors—four years during which he has been able to plan, to build and to test in secrecy.

Last week's letter from the Iraqi government to the United Nations, now pledging to allow inspectors back into the country, is another attempt to avoid strong action by the Security Council. We have seen this kind of tactic before. In the letter, the regime says it has no weapons of mass destruction. We know this is a lie. The entire world knows, beyond dispute, that Saddam Hussein holds weapons of mass destruction in large quantities, and is seeking to acquire more. This is not a matter of inspections. The only issue is the disarmament of Iraq, the elimination of the weapons of mass destruction, as required by Security Council resolutions.

False statements from the Iraqi regime will not cause us to ignore history or reality. Saddam Hussein has spent more than a decade in complete defiance of all the demands of the United Nations.

The question for the international community is whether the Security Council resolutions will be enforced, or disregarded without consequence—whether the United Nations will be effective, or irrelevant. As for the United States, the President has made our position abundantly clear: we want to work with the United Nations to meet the common challenge. The Security Council resolutions are to be enforced, or action will be unavoidable. We must, and we will, take whatever steps are necessary to defend our freedom and our security. (Applause.)

In the challenges to America we will be expecting a lot from our military—and those who serve have a right to expect a lot from us. If we're going to ask young men and women to defend our country, our allies, and our freedom, if we're going to send them into harms' way, on dangerous missions to fight determined enemies—they deserve the best tools, the best training, and the best support we can possibly give them.

We are investing in our military so that we can deploy swift and agile forces—any place, any time they're needed. We are building precision weapons that can spare the lives of American soldiers, and innocent civilians in foreign lands. We will multiply every advantage in order to prevail over any enemy. And to have this capability, President Bush has asked for the most significant increase in defense spending since Ronald Reagan lived in the White House.

The conduct of our military does more than bring credit to the country; it reflects the basic character of the American people. This is a good, and decent, and generous land. We fight not for revenge against our enemies, but for the freedom and security of our own people—and for the peace of the world. At times in our history the price of freedom has been very high, but Americans have always been willing to pay that price—even when the odds weighed heavily against us.

I was reminded of this the other day as I read David McCullough's biography of our first Vice President, John Adams. When Adams and his fellow delegates voted to approve the Declaration of Independence, they knew precisely what kind of trouble they were bringing on themselves. To sign the Declaration, one of the founders said, was like signing your own death warrant. As of July 4, 1776, they would be considered traitors to the king, at war with the army of an empire.

Large numbers of enemy soldiers were already positioned on American soil, intent on crushing the rebellion in short order. In mid-August, 32,000 British troops landed at Staten Island—an army greater in size than the entire population of our then-largest city, Philadelphia. The American force was far smaller, had very little in the way of equipment and supplies, and was comprised almost entirely of poorly-trained volunteers. All they had was the courage of human beings determined to live in freedom.

Before they prevailed the Americans endured not weeks, not months, but years of hardship and struggle. The American victory at Yorktown didn't come until the fall of 1781. The Treaty of Paris, which John Adams helped negotiate and which ended the Revolution, was finally concluded in September of 1783—more than seven long, difficult years after the Declaration was signed.

From that day to this, the people of the United States have understood that the freedom that we enjoy did not come easily—and we have no intention of letting it slip away. History has called generations of Americans to defend our country and to defeat some of the gravest threats known to mankind. We have accepted that duty once again, because we know the cause is just—we understand that the hopes of the civilized world depend on us—and we are certain of the victory to come.

In this critical time I have the honor to stand beside a President who has united our nation behind great goals. For all the challenges we face, the United States of America has never been stronger than we are today—and even better days are ahead of us. President Bush and I are very grateful for the opportunity to serve our country. We thank you for your support—not just for our efforts, but for good candidates like Adam Taff, who will make a fine partner for us in the important work ahead.

Thank you very much. (Applause.)

Mr. BROWNBACK. Mr. President, I think it is important that we work off actual words and not headlines, off actual words and not interpretations, and off actual words and not feelings towards words.

That is the reason I wanted to enter into the RECORD the specific wording the Vice President used in the speech that is being commented upon a great deal by a number of Members. The headline that was out was not something that was said by the Vice President. I think it is important we get the actual words he used on Monday.

I want to also make something very clear. The Vice President did not at all challenge the patriotism of any Member of Congress—House or Senate, Republican, Democrat, or Independent. He did not challenge any of that. He didn't mention any member by name other than the one he is supporting, and who is running for the House of Representatives.

He spoke at length about Saddam Hussein, about the need for homeland security, and about the need to move these bills forward.

There was no accusation whatsoever about any lack of patriotism on anybody's part. He is supporting, in this case in Kansas, the Third District candidate, Adam Taff, a man who is a former military man, an F–18 pilot, who fought in the gulf war the first time around, and who is running for Congress. This particular individual actually served as an F–18 pilot in the military when Vice President CHENEY was then Secretary of Defense.

Here is a person, a candidate, Adam Taff, who actually worked for the Vice President when he was Secretary of Defense, in a military capacity, and he does push forward his military credentials, as any candidate for office would push forward his credentials for office. And Adam Taff claims his military credentials. I think that is fully laudable and appropriate.

I think it is important to make clear that the Vice President didn't challenge any patriotism whatsoever and did not reference the Senate in any of his comments. Again, as I stated, I have here his actual comments that have been submitted for the RECORD.

I think there has been far too much protesting about this when what we really need to do is get homeland security passed and get an Iraqi resolution dealt with and I hope passed. I hope we can get a resolution, work together in a bipartisan fashion, and get an overwhelming majority for the Iraqi resolution. If we need to adjust words on it, I think that is fully appropriate because we need to show to the world a united front and that this distraction today is just that—a distraction.

Homeland security we should have passed some time ago. We have been on it now for 3 weeks. We have been on it primarily because of special interest issues and not because of interests for the country. I think we need to get that bill posted and cleared in this Congress. It would be an important thing for us to do. It is the time for us to get that done. We have dawdled too long on it.

But these allegations coming forward today that somehow there has been a challenge to the patriotism of other Members of this body are simply not supported by the facts. They are not supported by the facts anywhere. They are not supported by what the Vice President said in Kansas.

We clearly need to deal with the facts instead of trying to divert attention by saying there is an accusation going on which is not built upon the facts—allegations that are coming forward challenging the patriotism of people who have served in the military and in this body. Nobody is challenging that.

There is a clear challenge that we are not getting homeland security passed. We have been 3 weeks at it. There is a clear challenge that we have to get an Iraqi resolution passed before this body goes out for the election period—possibly an extended recess, or coming back in a lame duck session, whichever actually takes place.

We really should get this bill moved forward. I think if people want to do away with these accusations, the best thing we can do is pass the homeland security bill and pass an Iraqi resolution that we work and mold together here as a body, and get that passed by an overwhelming majority in this body.

I urge my colleagues; I think it would be wise for us to lower our decibel level on this, look at the factual material, and not go after misleading headlines but actually examine the record and move forward with these two very serious pieces of business. It is important that we do that.

The Vice President has not—and I don't think in the future will—challenged anyone's patriotism. People disagree on political issues. They disagree on issues of policy. That is clear. That is why we have a body that debates these issues.

Some people view homeland security one way, and some people think we ought to support giving the President the authority to take whatever means necessary to remove Saddam Hussein. The former Vice President articulated a couple of days ago, saying no, that this is something we don't need to do and shouldn't do at this time. That is the former Vice President's opinion. Others have a different opinion on that.

But we would be wise to debate what those issues are, and the specifics, and not allege issues of character which are not being challenged by the President or by the Vice President.

I yield the floor.

## COMMERCIAL OPERATIONS OF THE CUSTOMS SERVICE

Mr. BAUCUS. Mr. President, I am very pleased that the Senate agreed last night, by unanimous consent, to adopt an amendment that Senator GRASSLEY and I offered to the homeland security bill. Our amendment will reinforce the commercial operations of the Customs Service within the new Department of Homeland Security.

A key objective of the homeland security bill is to create coherence in law enforcement at our nation's borders. The Customs Service is vital to that endeavor. For the vast majority of people entering the United States, their first encounter with the U.S. Government is when they are cleared by a Customs officer.

The Customs Service is the principal U.S. Government agency at most ports of entry. It enforces a multitude of commercial and other laws on behalf of itself and some 40 other Federal agencies. In addition to collecting duties, fees, and taxes on imports, Customs assists the Census Bureau in collecting trade data; enforces our environmental laws by ensuring that products of endangered species are not brought into this country; protects U.S. intellectual

property owners and consumers by barring entry to counterfeit and ''gray market'' goods; prohibits illegal drugs and other contraband from coming into the United States; and enforces numerous other laws.

It was a Customs inspector who apprehended the so-called millennium bomber in Port Angeles, WA in December 1999. Customs also has played a major role in putting an end to the scourge of child pornography on the Internet and to fighting the war on drugs. Unquestionably, Customs is an essential player in law enforcement at our borders and, for this reason, ought to be integrated into a new Department of Homeland Security. At the same time, we must not forget that the core mission of the Customs Service is a commercial mission. Customs is first and foremost responsible for the collection of duties, taxes and fees on imports. This is one of the oldest functions of the Federal Government. It was authorized by the second act of Congress, in July 1789.

Today, duties collected by Customs constitute the second most important source of federal revenues, after the income tax. In fiscal year 2001, Customs processed over 25 million formal entries of cargo, worth over $1 trillion. Duties, fees, and taxes on that cargo amounted to about $20 billion. Thus, Customs' performance of its core commercial function is critical as a source of revenue to the U.S. Government. Customs' performance of its core commercial functions also is extremely important to the U.S. businesses that rely on imports and exports. The approximately 25 million formal entries that Customs processed in fiscal 2001 represented a 60 percent increase from only 5 years earlier. The volume of international trade is increasing significantly. To keep that trade flowing, Customs must perform its job with ever greater efficiency.

For these reasons, we must ensure that in moving from the Department of Treasury to a new Department of Homeland Security, Customs is able to do its commercial job as capably as it does today. I commend Chairman LIEBERMAN for recognizing this imperative and for working with the Finance Committee to secure the Commercial side of Customs within the new Department. I would like to point out that in mid-July, the Finance Committee held a very enlightening hearing on the issue of Customs' integration into a Department of Homeland Security. Following the hearing, Senator GRASSLEY and I transmitted a set of recommendations to Chairman LIEBERMAN and Ranking Member THOMPSON. I am very pleased that a number of the key recommendations are part of the pending bill. In particular: The bill preserves the Customs Service as a ''distinct entity'' in the new Department. The bill provides that appointments required to be made by the President, by and with the advice and consent of the Senate shall continue to be subject to that requirement. I understand that this will include the Commissioner of Customs. The bill preserves for the Secretary of the Treasury certain legal authorities regarding ''customs revenue functions.'' Thus, even though Customs will move to the Department of Homeland Security, the Secretary of the Treasury will remain the ultimate decision maker in issuing most commercial regulations administered by Customs. this is important, because it ensures that the national economic interest will guide the issuance of regulations affecting Customs' commercial operations.

We must bear in mind that this bill will move a commercial agency—Customs—from a Department whose primary focus is on the national economic interest, to a Department whose primary focus is on national security. The provisions I cited will help ensure that Customs' commercial mission does not get diluted in that process. The amendment accepted yesterday bolsters that objective.

The amendment contains three provisions.

First, it makes clear that certain user fees that Customs collects from passengers and conveyances entering the United States will be available for use by the Customs Service exclusively.

Second, it sets up a special account at the Treasury to support development and implementation of Customs' Automated Commercial Environment, known as ''ACE.'' ACE is a modern computer system that will replace Customs' antiquated system for the processing of imports. Of the fees collected by Customs for processing merchandise, $350 million per year will be deposited into the ACE account.

Third, the amendment makes clear that the Advisory Committee on Commercial Operations of the United States Customs Service—known as the ''COAC''—will remain in existence following Customs' move to the new Department. The COAC was created by statute in 1987. It is a bipartisan group of 20 representatives of individuals and firms affected by commercial operations of Customs. Over the years, it has provided valuable advice to the Secretary of the Treasury. Under this amendment, ti will continue to do so, and will advise the Secretary of Homeland Security as well.

I firmly believe that these provisions, along with the customs-related provisions in the underlying bill will ensure that Customs remains a strong and effective trade agency, as well as a strong and effective law enforcement agency, in the new Department.

Finally, I would like to say a word about another aspect of the Lieberman bill for which the Chairman should be commended. I am referring to the provisions protecting the rights of employees in the new Department. The most valuable resource of our government is the people who work for it. We must give every incentive for the best and the brightest to serve and to continue serving.

I understand that the President has asked for enhancement ''flexibility'' in dealing with employees of the new Department. However, it is not at all clear to me that depriving federal workers of collective bargaining rights, merit systems protections, and whistle-blower protections, among other protections, is necessary to achieve improved homeland security. In fact, I believe that just the opposite is true. To improve homeland security, we need a top-notch workforce. Getting and keeping that top-notch workforce means assuring employees that they will be treated fairly and enjoy the same protections that other federal employees enjoy. I applaud Chairman Lieberman for recognizing this and embedding it in the bill.

I thank the Chair.

## EXPLANATION OF VOTES

Mr. BAUCUS. Mr. President, I rise today to discuss my intent on four rollcall votes where I was necessarily absent due to my required presence in my home State of Montana. These votes are directly important to Montana and the Nation. I would like the opportunity to further the debate on these timely issues.

The cloture vote on Senator BYRD's amendment to the fiscal year 2003 Interior Appropriations legislation has a direct and fundamental impact on Montana for three reasons. First, the amendment reimburses the United States Forest Service for funding expended fighting fires this year. This funding is essential because of the high fire danger that still exists in the West due to the prolonged drought and funding already spent on fires cannot be used for existing USFS obligations and duties on our national forests.

Second, my good friend from West Virginia's amendment has already been modified to include the most important funding that could be dispersed this year for Montana's economy. I'm speaking, of course, about natural disaster funding for our farmers and ranchers. Montana is suffering through its fourth year of drought and conditions could not be worse. If we do not move forward with a disaster package, there will simply be fewer family farms and ranches around next year. Period. This is a debate that has gone on far too long and the House and President Bush need to come to the table and accept the work of the Senate. A natural disaster proposal has now passed the Senate twice by a large bipartisan margin. Now is the time to get this funding out to the people who need it, who need certainty about their future.

Finally, the reason that a cloture vote is required stems from the controversial nature of the pending amendment of Senator CRAIG regarding forest health. The issue of forest health is a huge problem in the West and has the most direct of conditions with not

only the increased fire risk, but the drought that this legislation addresses. While the proposals vary, forest health is an issue that needs to be dealt with immediately. Further delay in the Senate does not serve Montanans or anyone in the West that is trying to make a living and a life under these conditions.

Because we need to deal with all three of these issues as soon as possible, I fully support cloture on Senator BYRD's amendment. I am disappointed that it did not pass.

With regards to the amendment proposed by my colleagues from Connecticut, Senators DODD and LIEBERMAN, I am forced to disagree with the basis of their amendment. My colleagues from Connecticut have represented their amendment as only codifying existing procedures. But, from what I understand based on the hearing held in the Indian Affairs Committee on September 18, this amendment in fact requires the implementation of new procedures, including adversarial hearings at the request of any interested party, raises the burden of proof that a petitioning group must satisfy in meeting the seven mandatory criteria, and requires the Department to provide notice to officials of every State and local government and municipality where a tribal group may have ever been historically located or any geographic area a tribal group may have ever occupied.

In my home State of Montana, the Little Shell Band of the Chippewa Indians have been battling for over a decade for their Federal recognition. They have had to jump through many hoops as it is and they have yet to receive their official recognition. My Colleague's amendment would not only prolong the Little Shell's recognition, but would only add to the burden they have already carried for over a decade. Based on the outcome of the Indian Affairs hearing and the impact on my tribe at home, I respectfully disagree with my colleagues on this matter and believe it is in the best interest of the recognition process that their amendment was rejected.

Moving on to the Homeland Security votes, I would like to address the amendment introduced by my esteemed colleague from West Virginia once again. Senator BYRD has urged that the Senate take its time to thoroughly debate and analyze the proposed legislation to create the Department of Homeland Security. He has introduced an amendment to ensure that the Congress continues to play a role in the creation of a new Federal Department of Homeland Security. I agree with the good Senator that Congress should debate and analyze this proposal, but I disagree with his proposal on how that debate should proceed.

The Byrd amendment would require that the department be established in three phases. Each phase would be initiated by a proposal sent to the Congress by the President. Each proposal sent to Congress would be referred to the appropriate congressional committees. The appropriate Congressional Committees should be involved in this process. But there are no deadlines or fast track procedures for legislative consideration and no guarantee the proposals would ever emerge from Congress and be signed into law.

This amendment would force Congress to reopen every battle over which agencies should be transferred into the new Department and on what terms they would be transferred. Moreover, by dividing the development into five separate legislative proposals, this amendment makes it impossible for legislators to consider the Department as a whole.

I regret to say that I cannot support my colleague's amendment and believe it was in the Nation's best interest that the amendment was not agreed to.

Finally, ever since the devastating attacks of September 11, Americans have been asking how the attacks happened, why they weren't prevented, and what corrective measures could be taken to prevent similar tragedies from ever occurring again. The American people deserve answers to these very legitimate questions. It's important that we find out just what happened through a non-partisan commission.

The amendment introduced by Senator LIEBERMAN represents a bipartisan initiative to help answer the many remaining questions in a constructive, methodical, and nonpartisan way. I support the amendment and am pleased that it passed.

## SALUTE TO TAIWAN'S FIRST LADY

Ms. LANDRIEU. Mr. President, I take great pleasure in welcoming Taiwan's First Lady, Wu Shu-chen, to Capitol Hill. Madam Wu Shu-chen is a unique and remarkable woman. She is the Republic of China's youngest first lady, yet she has the poise and charm equal to those much older than she is. Men and women of all political parties admire her as a genuine person, totally unaffected in manners. When she addresses an audience, she speaks from her heart and writes her own speeches in a simple and direct style. She is what you see, a natural gem, without artificial polish.

Like her husband, Chen Shui-bian, Madame Wu, has overcome a great deal of adversity. And like her husband, they have both been strengthened by their struggles. In 1985, Madame Wu was struck by a hit and run driver. Her injuries left her permanently paralyzed from the waste down and confined to a wheel-chair. Soon after Madame Wu was tragically wounded, her husband was imprisoned for political reasons. Madame Wu did not shrink from her duties to her family or her country. While her husband was in jail, she not only served as a pillar for her family, but she ran for a seat in the national legislature and won. No obstacle affecting her body or her heart could deter her.

Such a woman deserves our praise. Madame Wu is a natural leader; a matriarch in her family; and a matriarch to her country. I salute her for her selfless devotion to the people of Taiwan. We can all take strength from Madame Wu, and she is a role model for young women everywhere.

Mr. HELMS. Mr. President, I extend my warmest welcome to the First Lady of Taiwan, Chen Wu Sue-jen, wife of President Chen Shui-bian, who is in Washington this week to visit with some of her and her husband's many friends here.

I am among the many admirers of President Chen. He is a courageous leader of his country at a very difficult time. The courage of his wife has earned for her great respect. In 1985, while supporting one of her husband's campaigns, Mrs. Chen Wu was hit by a vehicle that left her paralyzed from the waist down. That regrettable episode, believed by many to have been politically motivated, left this dear lady permanently confined to a wheelchair.

The following year when her husband was imprisoned by his political foes, Mrs. Chen Wu sought election on his behalf for a seat in the national legislature. She won and served in the legislature in spite of her serious injury. This courageous lady thereby kept Chen Shui-bian's political cause in the public eye.

Both before and after these events in their lives, Mrs. Chen Wu provided indispensable encouragement and support as Chen Shui-bian progressed from legislator to Taipei Mayor to President. He has called his wife his ''most important source of strength.''

First Lady Chen Wu Sue-jen was instrumental in building Taiwan's early, unequivocal and generous support for the United States and American people following the attacks on September 11, 2001. She comes to the United States this week with a message of Taiwan's continuing strong support in the war against terrorism.

I know that Senators will share my appreciation for her country's friendship and solidarity. I also hope they will join in welcoming Taiwan's First Lady on the occasion of her historic visit to the United States.

Mr. BOND. Mr. President, today I would like to recognize Madame Chen We Sue-jen, the first lady of Taiwan, and welcome her to Washington, DC.

Madame Chen We Sue-jen has displayed exemplary character and strength in her endeavors to promote justice, human rights, and democracy in Taiwan. Overcoming both personal and professional hardships with grace, she has remained steadfast in her support of these principles.

Although Madame Chen We Sue-jen has overcome obstacles throughout her public career, never has she let it overcome her. She is described as optimistic, cheerful and friendly-noted for

her sense of human and laughter. She continues to act as a strong and effective advocate for Taiwan's physically challenged citizens. Throughout all her trials, she has remained solid in her support for her family and the people of Taiwan. This strength of character has contributed much to the First Lady's greatness.

First Lady Chen Wu is here today to bring a message from her husband and the people of Taiwan. Her message is one of cooperation and support from the Taiwanese in our joint antiterrorism campaign. Already, with support of Madame Chen We Sue-jen, Taiwan has demonstrated charity and humanitarian assistance to the victims of the terrorist attacks on September 11, 2001. As mentioned in the House Resolution, the Government and people of Taiwan have consistently provided tremendous support and generous contributions to the United States after those attacks.

Madame Chen We Sue-jen is a woman of great character and strength. I wish to offer my warmest welcome to her as she visits the Capitol. I extend my gratitude to her for all the important work she has done and I wish her well in her pursuits of justice and democracy.

## LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 17, 2001 in Helena, MT. A gay college student was beaten unconscious in his dorm room. The attacker struck the student in the head with a bottle, beat him while he was unconscious, and wrote ''Die Fag'' on his body with an ink marker. The victim withdrew from school two weeks after the attack.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## CRANE CONSERVATION ACT OF 2002

Ms. LANDRIEU. Mr. President, I rise today to express my support for S. 2847, which I recently joined as a cosponsor.

Cranes, the tallest flying birds on Earth and among the most graceful, inhabit wide expanses of wetlands and grasslands and exert a charismatic appeal reflected in many cultures.

Our Whooping Crane, the rarest of the world's cranes, is shared with Canada and has survived only because of close cooperation between the United States and Canada. If the species is to survive, however, those magnificent birds need more intensive conservation efforts. This bill would provide such help, all up and down the Mississippi River Flyway, while also applying our conservation techniques on behalf of nine more endangered species of cranes in Africa and Asia.

This bill would support organizations with expertise in crane conservation by funding projects in areas such as habitat protection and restoration, research and monitoring of crane populations, community participation and outreach, and reintroduction of cranes to the wild. The projects will be asked to promote long-term conservation by eliciting matching funds from government agencies, local communities, NGOs or others in the private sector.

Whether in Louisiana, elsewhere in the United States, or overseas, protecting cranes' ecosystems benefits thousands of other animal and plant species at the interface between aquatic and terrestrial habitats.

Louisiana is important to cranes because of the spectacular wetlands along our southwest coast. Sandhill cranes, which had disappeared from the state, already have returned as a wintering species. In a natural area near New Orleans, the Audubon Nature Institute has established a Species Survival Center which is rearing the endangered Mississippi subspecies of the sandhill crane, for release in the Mississippi Sandhill Crane National Wildlife Refuge near Biloxi. That Center also recently received eight Whooping Cranes and plans to expand to ten breeding pairs as the core of a plan to restore Whooping Cranes to Louisiana's coast.

Funding would flow through a new ''Crane Conservation Fund'' in Interior's Multinational Species Conservation Fund. In covering cranes, this bill would for the first time provide such protection for a species of bird.

I ask other Senators to join me in supporting the Crane Conservation Act of 2002.

## FALUN GONG

Mr. BOND. Mr. President, today I would like to recognize the determination and perseverance of the Falun Gong, a peaceful movement seeking the basic freedoms to think as they wish and believe as they choose that we as Americans hold so dear.

Three principles of Truth, Compassion, and Tolerance lie at the core of Falun Gong. Those who practice Falun Gong do so to become better, healthier people through living by these principles.

Despite Falun Gong's peaceful principles and teachings, violations of human rights have occurred in China against Falun Gong practitioners. Human rights is an important goal as recognized by the United Nations Universal Declaration of Human Rights which sets forth certain basic rights such as the right to life, to liberty, and to the freedom of expression. The Senate has ratified a series of international treaties such as International Covenant of Civil and Political Rights, 1976, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1987. The Senate's approval of these and other treaties highlights the progress made towards human rights.

In direct response to the recent human rights violations against Falun Gong practitioners, the Senate, on November 19, 1999, unanimously approved Senate Resolution 217. This resolution, ''recognizing the plight of many Chinese citizens,'' calls on the Government of the People's Republic of China to: 1. release all prisoners of conscience and put an immediate end to the harassment, detention, physical abuse, and imprisonment of Chinese citizens exercising their legitimate rights to free belief, expression, and association; and 2. demonstrate its willingness to abide by internationally accepted norms of freedom of belief, expression, and association by repealing or amending laws and decrees that restrict those freedoms and proceeding promptly to ratify and implement the International Covenant on Civil and Political Rights.

We must embrace the opportunity to continue to support the principles of Falun Gong to realize freedom and I wish them well in their quest for freedom and justice.

# ADDITIONAL STATEMENTS

## NEW JERSEY TASK FORCE ONE

• Mr. TORRICELLI. Mr. President, I rise today to bring to the attention of the Senate the outstanding efforts and contributions of the New Jersey Task Force One Urban Search and Rescue Team.

On September 11, 2001 at approximately 9:00 a.m. New Jersey Task Force One was activated and deployed to the World Trade Center Attack. Requested by New York City's Office of Emergency Management, New Jersey Task Force One had an advance team in New York City by 11:15 a.m. The team's entire equipment cache, along with 140 members was set up at the Jacob Javits Center by 2:00 p.m. that same day. They deployed search assets to search for survivors during the afternoon and evening of the 11th and for the next 10 days, they worked continuously as part of the urban search and rescue effort.

In a short period of time, New Jersey Task Force One became an integral part of the rescue efforts. The team was integrated into the FEMA Urban Search and Rescue System and was included in the FEMA Urban Search and Rescue Action Planning. The well-equipped New Jersey Task Force One had the ability to lend critical equipment to some of the responding FEMA

teams and developed an excellent working relationship with many of these teams. Structural engineers and planners from New Jersey Task Force One were used by the FEMA Incident Support Team to brief the incoming FEMA teams as they rotated into New York City.

FEMA gave an operational performance evaluation to New Jersey Task Force One for their participation related to the World Trade Center Operations. New Jersey Task Force One was rated as superior in six out of nine categories. Those categories included attitude, initiative, consideration for personnel welfare, obtain necessary equipment and supplies, physical ability for the job, and safety.

With valor and honor, the members of New Jersey Task Force One have proven themselves as one of the finest Urban Search and Rescue teams in the country. It is for these reasons that my colleague, Senator CORZINE and I introduced S. 2618 to designate New Jersey Task Force One as the 29th National Urban and Search Rescue Team.

New Jersey Task Force One was formed in 1997 and they have used the FEMA Urban Search and Rescue guidelines in its development. The team is organized under the New Jersey State Police Office of Emergency Management Domestic Preparedness and Hazardous Material Planning and Emergency Response Unit. The State provides an annual budget of $1.5 million to support New Jersey Task Force One.

The team consists of 180 members from over one hundred different fire, police and EMS agencies throughout the State. Over the past few years, New Jersey Task Force One has purchased the necessary cache of equipment, based on the FEMA equipment list, and has trained its members to FEMA Urban Search and Rescue Standards. New Jersey Task Force One is in the process of purchasing weapons of mass destruction response equipment.

The 180 courageous men and women of New Jersey Task Force One have dedicated their lives to saving others. They have proven themselves to be highly qualified to join FEMA's Urban Search and Rescue System. I strongly believe that New Jersey Task Force One would enhance FEMA's Urban Search and Rescue program. I urge the FEMA Director to include New Jersey Task Force One as the 29th FEMA Urban Search and Rescue team. ●

## TRIBUTE TO MR. BOB HAYES

● Mr. NELSON of Florida. Mr. President, I rise today to mark the passing of a truly exceptional friend and athlete, Mr. Bob Hayes. On September 18, 2002, the State of Florida and the world lost a trailblazing athlete who broke records on the track field and set the standard for speed and agility in the National Football League.

Bob was a native of Jacksonville, where he attended Gilbert High School. While at Gilbert High, Bob displayed his athletic talents on the football and baseball fields, and on the basketball court. The honors he won in these athletic pursuits afforded him the opportunity to attend Florida Agricultural and Mechanical University on scholarship, where he played half-back and returned kicks for legendary coach Jake Gaither. In his illustrious career as a FAMU Rattler, he led the team in kick-off returns, held the team's touchdown record in 1963, and averaged over 26 yards per punt return in 1962 and 1963. In his senior season, Bob became the first African-American to play in the Senior, North-South, Bowl, a game in which he caught a touchdown pass from former NFL-great Joe Namath and was also named the South's Most Valuable Player.

Bob was also a premier track star. In his junior year at Florida A&M, Bob competed in the Tokyo Olympic Games. He earned the title ''World's Fastest Human'' for record-breaking performances in which he won the 100 meters in a world-record time of 10.5 seconds and anchored the 400-meter relay, finishing in 39.0 seconds. Both performances earned him Olympic Gold medals. His performance in the 400-meter is widely regarded as the greatest relay leg in track history.

In 1963, the Dallas Cowboys drafted Bob in the seventh round as a receiver. As a rookie, Bob had 46 catches for 1,003 yards and 12 touchdowns. Several past NFL players, including Roger Staubach and Calvin Hill, have commented on how Bob's speed and agility forced the NFL to begin to design defenses to counter his phenomenal plays. Indeed, Bob established the standard, in terms of speed and quickness, which present players now emulate. Bob spent 10 years in Dallas, where he was part of two Super Bowl teams. At the end of his career, Bob had 371 catches for 7,414 yards and 71 touchdowns, still a Cowboys receiving record.

At his death, Bob remains the only athlete to have won a Super Bowl ring and Olympic Gold Medals. His amazing achievements on both the football and track field truly give meaning to his nickname-''The Bullet''. He is enshrined in the USA Track and Field Hall of Fame and similar Halls of Fame in Florida, Texas and at Florida A&M. In September 2001, Bob was inducted as the 11th member of the Cowboys' Ring of Honor at Texas Stadium.

Bob's achievements stand as a testament to hard work, dedication and perseverance. In his later years, he sought to pass these ideals on to aspiring high school track stars through the Bob Hayes Invitational Track and Field Meet. Truly, it can be said that he touched many lives and inspired future generations of athletes. While it is with great sadness that I mark his passing, I am happy to recognize Bob's legacy for the great State of Florida and the entire world.●

## TRIBUTE TO DR. BERNARD S. ARONS

● Mr. WELLSTONE. Mr. President, I rise today to join my colleagues Senator EDWARD KENNEDY, Congressman PATRICK KENNEDY, and many others to recognize the extraordinary achievements of Dr. Bernard S. Arons as Director of the Center for Mental Health Services at the Substance Abuse and Mental Health Services Administration, and to acknowledge his departure as he moves forward to become Senior Science Advisor to the new Director of the National Institute of Mental Health. As we strive to pass critically important mental health legislation in this Congress, we know how fortunate we have been to have Bernie's extraordinary leadership at CMHS during these past nine years. His expertise and remarkable ability to integrate mental health services with evidence-based practices and scientific research made him an outstanding national leader who directed our country's mental health agenda through many years of challenge and crisis.

When Bernie first came to CMHS in 1993, he faced an enormous challenge: heading a new Federal Center whose mission was to lead our country in the delivery of mental health services. To do this, he faced the reality of inadequate resources at the federal, state, and local level for those with mental illness. The lack of mental health parity in private and public health care systems leaves many states struggling with how to help. Yet he was undaunted. He and his extraordinary staff at CMHS led the way on making mental health a major priority for this country. For these last 9 years, he has clearly taken our country forward and helped to restore hope to the millions of Americans with mental illness. Bernie's extraordinary talents as an administrator, scientist, and communicator, have made him a major force in advancing the public's awareness of the ways in which mental illness affects the lives of so many. Although stigma still exists, there are very few who dare to challenge the fact that mental disorders are real, that they are treatable, that there are effective national and community programs that can help, and that we must do more to ensure that all get the treatment they need.

During his tenure at CMHS, Bernie worked closely with former Surgeon General David Satcher to publish the first-ever Surgeon General's Report on Mental Health, which continues to enhance national awareness of mental health issues. He led CMHS in addressing many critical mental health issues that traditionally impede access to quality services, such as stigma and lack of community services. His commitment to making a difference fueled the work on a National Strategy for Suicide Prevention, which continues to bring together researchers, providers, advocates and consumers in developing a prevention plan to reduce suicide in the United States. Bernie also guided

CMHS in providing a national response to recent terrorist threats, based in science and best practices. From studies on parity in mental health coverage to initiatives on school violence, CMHS has become a leading national voice on mental health issues under his leadership.

We are particularly pleased that Bernie was at the forefront of the efforts to shape the future of mental health services as our country faced the crisis of terrorism. More than ever, his efforts to include the voices of patients and families in the overall planning process at CMHS was needed. We too rely on those whose lives are touched by mental disorders to be the true experts in our work to shape public policy.

With his thoughtful, wise, and gentle manner, Bernie is truly a man who has the ability to bring together people with diverse responsibilities and missions to address the serious mental health crisis. Through his efforts, and with minimal resources, he shaped CMHS into an institution that has brought us so much further in the struggle to provide decent mental health services, reduce stigma, and to recognize as a society that mental disorders are real and treatable.

As he departs from the Center for Mental Health Services, we wish him well and thank him for all he has done to improve mental health care in our country. We are confident that Bernie has placed CMHS on a course that promises to build on these remarkable achievements, one that will meet the extraordinarily challenging mental health needs ahead. Dr. Bernie Arons will be sorely missed, but we know he will continue to be a major force for the improvement of mental health care in our country.●

## MESSSAGES FROM THE HOUSE

At 3:41 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill with an amendment:

S. 941. An act to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment:

S. 1105. An act to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes.

The message further announced that the House has passed the following bill, with an amendment:

S. 1240. An act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment:

S. 1894. An act to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes.

The message further announced that the House has passed the following bills, without amendment:

S. 1175. An act to modify the boundary of Vicksburg National Military Park to include the property known as Pemberton's Headquarters, and for other purposes.

S. 1325. An act to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests in Adak Island, and for other purposes.

S. 238. An act to authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1448. An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

H.R. 1606. An act to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for other purposes.

H.R. 2099. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 3656. An act to amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes.

H.R. 4708. An act to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District.

H.R. 4917. An act to provide for an exchange of lands with the United Water Conservation District of California to eliminate private inholdings in the Los Padres national Forest, and for other purposes.

H.R. 4919. An act to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes.

H.R. 4938. An act to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Santee Sioux Tribe of Nebraska, and for other purposes.

H.R. 4953. an act to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

H.R. 5099. An act to extend the period of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

H.R. 5109. An act to direct the Secretary of Energy to convey a parcel of land at the facility of the Southwestern Power Administration in Tupelo, Oklahoma.

The message further announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 110. Concurrent resolution honoring the heroism and courage displaced by airline flight attendants on a daily basis.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 419. Concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the International Association of fish and Wildlife Agencies.

H. Con. Res. 458. Concurrent resolution recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

H. Con. Res. 472. Concurrent resolution recognizing the 100th anniversary of the 4–H Youth Development Program.

H. Con. Res. 301. Concurrent resolution expressing the sense of Congress regarding American Gold Star Mothers, Incorporated, Blue Star Mothers of America, Incorporated, the service flag, and the service lapel button.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 640) to adjust the boundaries of Santa Monica Mountains National Recreation Area, and for other purposes.

At 4:00 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1646) to authorize appropriations for the Department of State for fiscal years 2002 and 2003, and for other purposes.

At 5:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 483. Concurrent resolution directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 1646.

## ENROLLED BILLS SIGNED

The following enrolled bills, previously signed by the Speaker of the House, were signed on today, September 25, 2002, by the President pro tempore (Mr. BYRD):

H.R. 486. An act for the relief of Barbara Makuch.

H.R. 487. An act for the relief of Eugene Makuch.

H.R. 4558. An act to extend the Irish Peace Process Cultural and Training Program.

## MEASURES REFERRED

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

H.R. 1448. An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa; to the Committee on Finance.

H.R. 1606. An act to amend section 507 of the Omnibus Parks and public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3656. An act to amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank; to the Committee on Foreign Relations.

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4708. An act to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District; to the Committee on Energy and Natural Resources.

H.R. 4917. An act to provide for an exchange of lands with the United Water Conservation District of California to eliminate private inholdings in the Los Padres National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4919. An act to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4938. An act to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Santee Sioux Tribe of Nebraska, and for other purposes; to the Committee on Indian Affairs.

H.R. 5099. An act to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins; to the Committee on Energy and Natural Resources.

H.R. 5109. An act to direct the Secretary of Energy to convey a parcel of land at the facility of the Southwestern Power Administration in Tupelo, Oklahoma; to the Committee on Energy and Natural Resources.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 301. Concurrent resolutions expressing the sense of Congress regarding American Gold Star Mothers, Incorporated, Blue Star Mothers of America, Incorporated, the service flag, and the service lapel button; to the Committee on Armed Services.

H. Con. Res. 419. Concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the international Association of Fish and Wildlife Agencies; to the Committee on the Judiciary.

H. Con. Res. 472. Concurrent resolution recognizing the 100th anniversary of the 4–H Youth Development Program; to the Committee on the Judiciary.

## MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2099. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4953. An act to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Michelle Guillermin, of Maryland, to be Chief Financial Officer, Corporation for National and Community Service.

*Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*Milton Aponte, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

*Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*David Wenzel, of Pennsylvania, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

By Mr. HOLLINGS for the Committee on Commerce, Science, and Transportation.

*Coast Guard nomination of Rear Adm. (Selectee) Robert J. Papp.

Mr. HOLLINGS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*(Coast Guard nominations beginning Kurt J. Colella and ending Lucretia Flammang, which nominations were received by the Senate and appeared in the Congressional Record on September 24, 2002.)

*(Coast Guard nominations beginning Alan N Arsenault and ending Matthew J Zamary, which nominations were received by the Senate and appeared in the Congressional Record on September 24, 2002.)

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

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. KENNEDY (for himself, Mr. GREGG, Mrs. CLINTON, Mr. ROBERTS, Mr. DODD, Mr. FRIST, Mr. JEFFORDS, Ms. COLLINS, and Mr. TORRICELLI):

S. 3001. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU:

S. 3002. A bill to provide for the preservation and restoration of historic buildings and structures at historically black colleges and universities; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 3003. A bill to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HELMS:

S. 3004. A bill to eliminate the Federal quota and price support programs for certain tobacco, to compensate quota owners and holders for the loss of tobacco quota asset value, to establish a tobacco community reinvestment program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. AKAKA:

S. 3005. A bill to revise the boundary of the Kaloko-Honokohau National Historical Park in the State of Hawaii, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. JOHNSON:

S. 3006. A bill to prohibit Internet gambling; to the Committee on the Judiciary.

## ADDITIONAL COSPONSORS

S. 710

At the request of Mr. SMITH of Oregon, his name was added as a cosponsor of S. 710, a bill to require coverage for colorectal cancer screenings.

S. 732

At the request of Mr. THOMPSON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 732, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for certain restaurant buildings, and for other purposes.

S. 776

At the request of Mr. BINGAMAN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 776, a bill to amend title XIX of the Social Security Act to increase the floor for treatment as an extremely low DSH State to 3 percent in fiscal year 2002.

S. 858

At the request of Mr. HUTCHINSON, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 858, a bill to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small business with respect to medical care for their employees.

S. 885

At the request of Mr. CLELAND, the name of the Senator from Hawaii (Mr.

AKAKA) was added as a cosponsor of S. 885, a bill to amend title XVIII of the Social Security Act to provide for national standardized payment amounts for inpatient hospital services furnished under the medicare program.

S. 917

At the request of Ms. COLLINS, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 940

At the request of Mr. DODD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 940, a bill to leave no child behind.

S. 1115

At the request of Mr. KENNEDY, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 1115, a bill to amend the Public Health Service Act with respect to making progress toward the goal of eliminating tuberculosis, and for other purposes.

S. 1304

At the request of Mr. KERRY, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 1304, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of oral drugs to reduce serum phosphate levels in dialysis patients with end-stage renal disease.

S. 1394

At the request of Mr. ENSIGN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1626

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 1626, a bill to provide disadvantaged children with access to dental services.

S. 1651

At the request of Mr. DORGAN, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1651, a bill to establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

S. 1746

At the request of Mr. REID, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1746, a bill to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities.

S. 2499

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2499, A Bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes.

S. 2573

At the request of Mr. REED, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2573, a bill to amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act, and for other purposes.

S. 2750

At the request of Mr. CONRAD, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2750, a bill to improve the provision of telehealth services under the medicare program, to provide grants for the development of telehealth networks, and for other purposes.

S. 2758

At the request of Mr. DODD, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2758, a bill entitled ''The Child Care and Development Block Grant Amendments Act''.

S. 2790

At the request of Ms. CANTWELL, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 2790, a bill to provide lasting protection for inventoried roadless areas within the National Forest System.

S. 2844

At the request of Mr. ROCKEFELLER, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2844, a bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes.

S. 2847

At the request of Mr. FEINGOLD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2847, a bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes.

S. 2855

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2855, a bill to amend title XIX of the Social Security Act to improve the qualified medicare beneficiary (QMB) and special low-income medicare beneficiary (SLMB) programs within the medicaid program.

S. 2892

At the request of Mr. KENNEDY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2892, a bill to provide economic security for America's workers.

S. 2965

At the request of Mr. KENNEDY, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 2965, a bill to amend the Public Health Service Act to improve the quality of care for cancer, and for other purposes.

S. 2990

At the request of Mr. BINGAMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2990, a bill to provide for programs and activities to improve the health of Hispanic individuals, and for other purposes.

S. RES. 239

At the request of Mr. ALLEN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 239, A resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the S.S. Henry Bacon, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

S. RES. 270

At the request of Mr. CAMPBELL, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 270, A resolution designating the week of October 13, 2002, through October 19, 2002, as ''National Cystic Fibrosis Awareness Week''.

S. CON. RES. 11

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Con. Res. 11, A concurrent resolution expressing the sense of Congress to fully use the powers of the Federal Government to enhance the science base required to more fully develop the field of health promotion and disease prevention, and to explore how strategies can be developed to integrate lifestyle improvement programs into national policy, our health care system, schools, workplaces, families and communities.

S. CON. RES. 145

At the request of Mr. KENNEDY, the names of the Senator from Alaska (Mr. STEVENS), the Senator from Connecticut (Mr. DODD) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Con. Res. 145, A concurrent resolution recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

AMENDMENT NO. 4543

At the request of Mr. WELLSTONE, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of

amendment No. 4543 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4544

At the request of Mr. WELLSTONE, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of amendment No. 4544 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4545

At the request of Mr. WELLSTONE, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of amendment No. 4545 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4546

At the request of Mr. WELLSTONE, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of amendment No. 4546 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4699

At the request of Mr. KYL, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 4699 intended to be proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4731

At the request of Mr. ALLEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of amendment No. 4731 intended to be proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY (for himself, Mr. GREGG, Mrs. CLINTON, Mr. ROBERTS, Mr. DODD, Mr. FRIST, Mr. JEFFORDS, Ms. COLLINS, and Mr. TORRICELLI):

S. 3001. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased today to join my colleagues Senator GREGG, Senator CLINTON, Senator ROBERTS, Senator DODD, Senator FRIST and others in introducing legislation to improve the labeling of allergens in food.

American families deserve to feel confident that the food they eat is safe. The Food Allergen Labeling and Consumer Protection Act will allow the seven million Americans with food allergies to identify more easily a product's ingredients, avoid foods that may harm them, and stay healthy. One hundred fifty Americans die each year from ingesting allergenic foods, and this legislation will greatly reduce that number.

The Food Allergen Labeling and Consumer Protection Act will require that food ingredient statements on food packages identify in common language when an ingredient, including a flavoring, coloring, or other additive, is itself, or is derived from, one of the eight main food allergens.

The Food Allergen Labeling and Consumer Protection Act will require the Food and Drug Administration to provide for ''gluten-free'' labeling on foods, to help people with celiac disease avoid the glutens that cause their disease. It will require FDA to report to Congress about how manufacturers can minimize cross-contact with food allergens between foods produced in the same facility or on the same production line, and about when manufacturers should use ''may contain'' or other advisory language in food labeling.

The Food Allergen Labeling and Consumer Protection Act will also require the Centers for Disease Control and Prevention to track deaths related to food allergies, and it will direct the National Institutes of Health to develop a plan for research activities concerning food allergies.

I urge my colleagues in the Senate to support this legislation that will do so much to improve the lives of those with food allergies and celiac disease. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3001

*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 ''Food Allergen Labeling and Consumer Protection Act''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) it is estimated that—

(A) approximately 2 percent of adults and about 5 percent of infants and young children in the United States suffer from food allergies; and

(B) each year, roughly 30,000 individuals require emergency room treatment and 150 individuals die because of allergic reactions to food;

(2)(A) Eight major foods or food groups—milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, and soybeans—account for 90 percent of food allergies;

(B) at present, there is no cure for food allergies; and

(C) a food allergic consumer must avoid the food to which the consumer is allergic;

(3)(A) in a review of randomly selected manufacturers of baked goods, ice cream, and candy in Minnesota and Wisconsin in 1999, the Food and Drug Administration found that 25 percent of sampled foods failed to list peanuts or eggs as ingredients on the food labels; and

(B) nationally, the number of recalls because of unlabeled allergens rose to 121 in 2000 from about 35 a decade earlier;

(4) a recent study shows that many parents of children with a food allergy were unable correctly to identify in each of several food labels the ingredients derived from major food allergens;

(5)(A) current regulations of the Food and Drug Administration require that ingredients in foods be listed by their ''common or usual name'';

(B) in some cases, the common or usual name of an ingredient may be unfamiliar to consumers, and many consumers may not realize the ingredient is derived from, or contains, a major food allergen; and

(C) current regulations of the Food and Drug Administration exempt spices, flavorings, and certain colorings and additives from ingredient labeling requirements that would allow consumers to avoid those to which they are allergic; and

(6)(A) celiac disease is an immune-mediated disease that causes damage to the gastrointestinal tract, central nervous system, and other organs;

(B) the current recommended treatment is avoidance of glutens in foods that are associated with celiac disease; and

(C) a multicenter, multiyear study estimated that the prevalence of celiac disease in the United States is 0.5 to 1 percent of the general population.

**SEC. 3. FOOD LABELING; REQUIREMENT OF INFORMATION REGARDING ALLERGENIC SUBSTANCES.**

(a) IN GENERAL.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

''(t)(1) If it is not a raw agricultural commodity and it is, or it intentionally bears or contains, a major food allergen, unless either—

''(A) 'Contains', which statement is followed by the name of the food source as described in section 201(ll)(1) from which the major food allergen is derived, follows immediately after or is adjacent to (in a type size no smaller than the type size used in the list of ingredients) the list of ingredients required under subsections (g) and (i); or

''(B) the common or usual name of the major food allergen in the list of ingredients required under sections (g) and (i) is followed in parentheses by the name of the food source as described in section 201(ll)(1) from which the major food allergen is derived, except that the name of the food source is not required when—

''(i) the common or usual name of the ingredient is the term used to describe a major food allergen in section 201(ll)(1), or

''(ii) the name of the food source as described in section 201(ll)(1) has appeared previously in the ingredient list; and

''Provided all major food allergens are labeled in a consistent manner either as specified in clause (A) or as specified in clause (B).

''(2) The information required under this subsection may appear in labeling other than the label only if the Secretary finds that such other labeling is sufficient to protect the public health. A finding by the Secretary under this subparagraph is effective upon publication in the Federal Register as a notice (including any change in an earlier finding under this subparagraph).

''(3) Notwithstanding subsection (g), (i), or (k), or any other law, a spice, flavoring,

coloring, or incidental additive that is, or that intentionally bears or contains, a major food allergen shall be subject to the labeling requirements of this subsection.

''(4) The Secretary may by regulation modify the requirements of subparagraph (A) or (B) of paragraph (1), or eliminate either the requirement of subparagraph (A) or the requirement of subparagraph (B), if the Secretary determines that the modification or elimination of the requirement is necessary to protect the public health.

''(u) Notwithstanding subsection (g), (i), or (k), or any other law, a spice, flavoring, coloring, or incidental additive that is, or that intentionally bears or contains, a food allergen (other than a major food allergen), as determined by the Secretary by regulation, shall be disclosed in a manner specified by the Secretary by regulation.''.

(b) EFFECT ON OTHER AUTHORITY.—This section does not alter the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) to require the labeling of other food allergens.

(c) CONFORMING AMENDMENT.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(ll) The term 'major food allergen' means any of the following:

''(1) Milk, egg, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans.

''(2) A proteinaceous substance derived from a food specified in paragraph (1) (unless the Secretary determines that the substance does not cause an allergic response that poses a risk to human health).''.

(d) EFFECTIVE DATE.—A food that is labeled on or after January 1, 2006, and that is, or that intentionally bears or contains, a major food allergen (as defined in the amendment made by subsection (c)) shall be labeled in compliance with the requirements of the amendment made by subsection (a).

**SEC. 4. REPORT ON FOOD ALLERGENS.**

Not later than June 30, 2004, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—

(1)(A) analyzes—

(i) the ways in which foods, during manufacturing and processing, can be unintentionally contaminated with major food allergens, including contamination caused by the use by manufacturers of the same production line to produce both products for which major food allergens are intentional ingredients and products for which major food allergens are not intentional ingredients; and

(ii) the ways in which foods produced on dedicated production lines might nonetheless become unintentionally contaminated with major food allergens; and

(B) estimates how common those practices are in the food industry, with breakdowns by food type as appropriate;

(2) recommends methods that can be used to reduce or eliminate cross-contact of foods with the major food allergens;

(3) describes—

(A) the various types of advisory labeling (such as use of the words ''may contain'') used by food producers;

(B) the conditions of manufacture of food that are associated with the various types of advisory labeling; and

(C) the extent to which advisory labels are being used on food products;

(4) determines how consumers with food allergies or the caretakers of consumers would prefer information about the risk of cross-contact be communicated on food labels by using appropriate survey mechanisms; and

(5) identifies the circumstances, if any, under which advisory labeling could appropriately be used.

**SEC. 5. INSPECTIONS RELATING TO FOOD ALLERGENS.**

(a) IN GENERAL.—The Secretary of Health and Human Services shall give priority to increasing the number of inspections under section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374) of facilities in which foods are manufactured, processed, packed, or held—

(1) to ensure that the foods comply with practices to reduce or eliminate cross-contact of a food with major food allergen residues that are not intentional ingredients of the food; and

(2) to ensure that major food allergens are properly labeled on foods.

(b) REPORT.—On October 1, 2003, and biennially thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—

(1) states the number of inspections conducted in the previous year and the numbers of facilities and food labels that were found to be in compliance or out of compliance;

(2) describes the nature of the violations found;

(3) includes the number of voluntary recalls, and their classifications, requested by the Secretary of foods with undeclared major food allergens;

(4) assesses the extent of use of advisory language found and the appropriateness of that use; and

(5) assesses the extent to which the Secretary and the food industry have effectively addressed cross-contact issues.

**SEC. 6. LABELING OF GLUTENS AND CELIAC DISEASE.**

(a) CONTRACT WITH INSTITUTE OF MEDICINE.—The Secretary of Health and Human Services (in this section, the ''Secretary'') shall enter into a contract with the Institute of Medicine for—

(1) the conduct of a review of the science relating to—

(A) the glutens in food that are associated with celiac disease;

(B) the means of preventing and treating celiac disease; and

(C) the methodologies for detecting such glutens in foods; and

(2) the submission to the Secretary, the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, not later than 2 years after the date of enactment of this Act, of a report concerning the review conducted under paragraph (1).

(b) REQUIREMENTS OF EXPERTISE.—The Institute of Medicine shall conduct the review under subsection (a)(1) and make the report under subsection (a)(2) in conjunction with experts in celiac disease, including experts in the pathogenesis, epidemiology, and biochemistry of celiac disease, the sensitivity to, and tolerance of, the glutens in food that are associated with celiac disease, and the clinical aspects of celiac disease, including prevention and treatment.

(c) GLUTEN LABELING.—Considering the review conducted under paragraph (a)(1), the Secretary shall, not later than 4 years after the date of enactment of this Act, issue a proposed rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods. Not later than 6 years after the date of enactment of this Act, the Secretary shall issue a final rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods.

(d) REPORT.—Not later than 2 years after submission to the Secretary of the report under subsection (a)(2), the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that assesses whether additional requirements for the labeling of gluten are warranted and necessary to better inform individuals with celiac disease, and if other labeling is warranted and necessary, identifies the types of such labeling.

**SEC. 7. DATA ON FOOD-RELATED ALLERGIC RESPONSES.**

(a) STUDY.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary''), in consultation with consumers, providers, State governments, and other relevant parties, shall complete a study for the purposes of—

(1) determining whether existing systems for the reporting, collection and analysis of national data accurately capture information on—

(A) the prevalence of food allergies;

(B) the incidence of clinically significant or serious adverse events related to food allergies; and

(C) the use of different modes of treatment for and prevention of allergic responses to foods; and

(2) identifying new or alternative systems or enhancements to existing systems (including by educating physicians and other health care providers), for the reporting collection and analysis of national data on—

(A) the prevalence of food allergies;

(B) the incidence of clinically significant or serious adverse events related to food allergies; and

(C) the use of different modes of treatment for and prevention of allergic responses to foods.

(b) IMPROVEMENT AND PUBLICATION OF DATA.—On completion of, and consistent with the findings of, the study conducted under subsection (a), the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Foods and Drugs, shall improve the collection of, and publish as it becomes available, national data on—

(1) the prevalence of food allergies;

(2) the incidence of clinically significant or serious adverse events related to food allergies; and

(3) the use of different modes of treatment for and prevention of allergic responses to foods.

(c) REPORT TO CONGRESS.—Not later than 30 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the progress made with respect to subsections (a) and (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

**SEC. 8. FOOD ALLERGIES RESEARCH.**

(a) IN GENERAL.—The Secretary of Health and Human Services, through the National Institutes of Health, shall convene a panel of nationally recognized experts to review current basic and clinical research efforts related to food allergies. The panel shall develop a plan for expanding, intensifying, and coordinating research activities concerning food allergies.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a plan under subsection (a) to the Committee on Energy and Commerce in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate.

**SEC. 9. FOOD ALLERGENS IN THE FOOD CODE.**

The Secretary of Health and Human Services shall, in the Conference for Food Protection, as part of its cooperative activities between the States under section 311 of the Public Health Service Act (42 U.S.C. 243), pursue revision of the Food Code to provide guidelines for preparing allergen-free foods in food establishments, including in restaurants, grocery store delicatessens and bakeries, and elementary and secondary school cafeterias. The Secretary shall consider public and private guidelines and recommendations for preparing allergen-free foods in pursuing this revision.

**SEC. 10. RECOMMENDATIONS REGARDING RESPONDING TO FOOD-RELATED ALLERGIC RESPONSES.**

The Secretary of Health and Human Services shall, in providing technical assistance relating to trauma care and emergency medical services to State and local agencies under section 1202(b)(3) of the Public Health Service Act (42 U.S.C. 300d–2(b)(3)), include technical assistance relating to the use of different modes of treatment for and prevention of allergic responses to foods.

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By Ms. LANDRIEU:

S. 3002. A bill to provide for the preservation and restoration of historic buildings an structures at historically black colleges and universities; to the Committee on Energy and Natural Resources.

Ms. LANDRIEU. Mr. President, I rise today to introduce the ''Historically Black Colleges and Universities Historic Preservation Act of 2002,'' legislation to revise and extend certain provisions of the Omnibus Parks and Public Lands Management Act of 1996.

I want to begin by acknowledging the important role played by the Nation's Historically Black Colleges and Universities, HBCUs, in educating young people of all races and nationalities in America. HBCUs are in the vanguard of providing access and some measure of choice in higher education, and of opening the doors to educational opportunity for all students, regardless of family income and traditional measures of academic readiness for college study. In Louisiana, we have a strong family of HBCUs: Grambling State University in Grambling, Southern University's three campuses in Baton Rouge, Shreveport and New Orleans, as well as Dillard and Xavier universities in New Orleans.

While similar bills have been introduced this Congress, my bill takes a different and, I believe, a necessarily strategic approach in identifying, prioritizing and providing the funds necessary to restore all of the historic buildings and sites on black colleges and campuses. This historic preservation bill provides an orderly process for identifying and assessing the degree of deterioration of all properties; for determining the capacity of the HBCU to provide ''matching'' funds to assist in the cost of restoration; and for prioritizing Congressional funding and the Interior Department's determination of properties eligible for restoration funding.

This legislation is not only needed, it is also timely. In 1998, the National Trust for Historic Preservation placed the historic buildings of the nation's HBCUs on its list of ''11 Most Endangered Historic Places''. The Trust cited a General Accounting Office study that found that the estimated cost of restoring and preserving the 712 historic properties, including dormitories, chapels, gymnasiums and classroom buildings, owned by the schools is $755 million, of which a mere $60 million, or 8 percent, has been set aside in school budgets. If we in Congress fail to help, the cost of restoration will only continue to rise while these historic buildings continue to deteriorate.

I urge my colleagues to co-sponsor this important legislation. Without it, we may not be able to ensure that these buildings will survive into the new millennium and beyond to welcome future generations of scholars.

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By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 3003. A bill to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, I rise today to introduce an important bill that will facilitate Forest Service land management on Prince of Wales Island and help community expansion and development. The City of Craig is one of the fastest growing cities in the State of Alaska. It is the economic center of Prince of Wales Island, the third largest island in the United States and home to a vibrant population of rural Alaskans. The only clinic or hospital on the island is located in Craig. The town contains the major retail shopping and service outlets on the island and Prince of Wales residents drive up to a hundred miles round trip to come to town for medical services and shopping.

One of the Forest Service's main administrative facilities, the Craig Ranger District Office is located in Craig and the Craig District Ranger has management authority over much of the island. It is critical that the Forest Service has the tools it needs to provide good management for that part of the island. One of these tools is the presence of some Federal land near the Craig Ranger Station. Right now, there is no Forest Service land near the Ranger Station. In an unusual situation for Alaska, the Ranger Station is an inholding in private, State, and City owned land. This legislation would provide for a three-way conveyance process which would result in a parcel of land now owned by the City being conveyed into the National Forest and a private inholding now owned by a private owner being acquired by the City.

This is one of those situations people like to describe as ''win-win.'' Providing a new recreational opportunity in the Tongass National Forest at Craig benefits the public, and the residents of Craig would obtain land vital to future community development.

What this legislation does, is authorize the Federal Government to accept conveyance of land from the City of Craig which will enable the City to acquire a private inholding near the City. The City would convey to the Federal Government up to 348.68 acres of land it now owns to the National Forest. This land is highly prized for local recreation and would provide the Craig Ranger District with a missing piece of its management scheme by providing a recreation site within short walking distance of the Ranger Station.

Right now, visitors to the Forest come to the Craig Ranger Office to orient themselves to the Forest. One of the things they look for is onsite recreation in the Forest from the Ranger Station. But presently there is no such opportunity. Because of the land conveyance status directly around Craig, there is no Forest land in that area. Visitors are disappointed that they must arrange transportation for at least a 20 mile trip before they can take even a short walk on the Forest.

However, the City of Craig owns almost 350 acres of prime recreational land including a dedicated trail from the Ranger Station. The object of this legislation would be for that land to be conveyed by the City to the Forest and for the City to obtain a much smaller 10 acres site in the town now owned by a private party. That property is a cannery site dating from the early 1900's which has not been used since the early 1980's. It is prime land for the city to develop to improve its community management plan and to provide economic development in Craig. The parcel include both uplands and tidelands and could be used by Craig to develop a good port and harbor and to provide first class locations for retail merchants and other community services.

I strongly support meeting the needs of Craig in developing its local economy. The entire island is in transition. When I was first elected to the Senate in 1980, Craig and Prince of Wales Island were the center of a vibrant timber based economy that provided thousands of direct and indirect jobs to the Island. Much of that is now gone as a result of unfortunate Federal policies which have devastated the timber economy on Prince of Wales Island and much of Southeastern Alaska.

The Congress must help Craig in its transition to another economy. The City leaders are dynamic and visionary people who have provided real leadership on the island. They have worked hard to help maintain the remaining timber plant at Klawock which provides year round employment to city and island residents. They have organized, along with their neighbors, the Prince of Wales Community Council, an association of municipalities and Native and non Native communities to work as a team on islandwide projects.

The most recent product of this effort is the InterIsland Ferry Authority composed of members from Wrangell, Petersburg, Ketchikan, Craig, Throne

Bay, and Coffman Cove. The Authority has built and put into service a day ferry from Hollis, a neighboring community to Craig, and my home town of Ketchikan. This ferry replaces the State ferry, which has been forced to cut back its service. The InterIsland Ferry service will increase to twice a day during the summer and will provide a terrific boost to the local economy of Craig and the island.

Passage of this legislation is critical to the future of the City of Craig. It will increase recreational opportunities for the local and visiting public. I urge my colleagues to join me in moving forward on this legislation. All the conveyances will be subject to appraisals as required by this Act. The Federal Government will receive equal value in land from the City for any funding which it provides under this Act. The passage of this Act is good for the public and for the residents of Craig. I yield the floor.

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By Mr. AKAKA:

S. 3005. A bill to revise the boundary of the Kaloko-Honokōhau National Historical Park in the State of Hawaii, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, I rise today to introduce the Kaloko-Honokōhau National Historical Park Addition Act of 2002. This bill provides for the adjustment of Park boundaries to permit the development of permanent Park operational facilities for administrative purposes and to provide the public with a visitor's center and interpretative facilities.

Kaloko-Honokōhau National Historical Park is located along the Kona coast on the island of Hawaii. It was designated as a National Historic Landmark in 1962 and was established as a National Historical Park in 1978. The Park was created to preserve, interpret, and perpetuate traditional Native Hawaiian culture. The ocean makes up over half of this 1160-acre Park, and the boundaries include the culturally significant Kaloko and 'Aimakapa fishponds and 'Ai'opio fish trap. There are also several heiau, or Hawaiian religious sites, found in the Park.

The Kaloko-Honokōhau National Historical Park is currently leasing office space outside the Park to carry out its necessary administrative, interpretive, resource management and maintenance functions. This office space is woefully inadequate. The amount of visitor parking available is limited to four spaces, and its location presents a challenge for visitor access.

The National Park Service has considered the possibility of constructing new operational facilities within the Park boundaries. However, such action would be inconsistent with current National Park Service management policies because of its adverse impacts on Park resources and values. Building within the boundary of Kaloko-Honokōhau Park would intrude on the Park's historic setting and has the potential to harm the fishponds, which are considered to be some of the Park's most valuable resources.

Acquiring an additional two parcels of land adjacent to the Park makes sense. An existing two-story building will provide an easy and inexpensive retrofit for use as Park headquarters. The building has never been occupied, and contains offices, lab and storage areas, as well as a reception lobby that would be ideal to host visitor orientation and interpretive programs. The building has the capacity for artifact storage that meets curatorial standards for historical and archaeological items. More than 90 percent of the two acres remains undeveloped, thereby providing enough space for visitor parking and future Park operations. It is important to note that no additional staffing would be required to support the proposed expansion.

Last year, 54,000 people visited Kaloko-Honokōhau National Historical Park. We need a facility there that offers administrative personnel the resources they need to carry out their management functions, and visitors the opportunity to learn about this important part of Hawaiian history. I look forward to working with my colleagues and the Park Service to make this possible.

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

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

S. 3005

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Kaloko-Honokōhau National Historical Park Addition Act of 2002.''

**SEC. 2. ADDITIONS TO KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK.**

Section 505(a) of P.L. 95–625 (16 U.S.C. 396D(a)) is amended—

(1) by striking ''(a) In order'' and inserting ''(a)(1) In order'';

(2) by striking ''1978,'' and all that follows and inserting ''1978.''; and

(3) by adding at the end the following new paragraphs: comprised of Parcels 1 and 2 totaling 2.14 acres, identified as 'Tract A' on the map entitled 'Kaloko-Honokōhau National Historical Park Proposed Boundary Adjustment', numbered PWR (PISO) 466/82,043 and dated April 2002.

''(3) The maps referred to in this subsection shall be on file and available for public inspection in the appropriate offices of the National Park Service.''.

**SEC. 3. AUTHORIZATIONS OF APPROPRIATIONS.**

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

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## AMENDMENTS SUBMITTED AND PROPOSED

SA 4732. Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4733. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4734. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4735. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4736. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4737. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4738. Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4739. Mrs. CARNAHAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4740. Mr. NELSON, of Nebraska (for himself, Mr. CHAFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4741. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4742. Mr. DASCHLE proposed an amendment to the bill H.R. 5005, supra.

SA 4743. Mr. DASCHLE (for himself, Mr. NELSON, of Nebraska, Mr. CHAFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4742 proposed by Mr. DASCHLE to the bill H.R. 5005, supra.

SA 4744. Mr. DASCHLE submitted an amendment intended to be proposed to the language proposed to be stricken by amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H .R. 5005, supra; which was ordered to lie on the table.

SA 4745. Mr. DASCHLE submitted an amendment intended to be proposed to amendment SA 4744 submitted by Mr. DASCHLE and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4746. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4747. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4748. Mr. KENNEDY submitted an amendment intended to be proposed by him

to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4749. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4750. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4751. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4752. Mr. HOLLINGS (for Mr. GRAHAM) proposed an amendment to the bill S. 2506, to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

## TEXT OF AMENDMENTS

**SA 4732.** Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. STANDARDS FOR CLOSING REMOVAL HEARINGS.**

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

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

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103–322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

---

**SA 4733.** Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

**SEC. ___. CIVIL RIGHTS OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

**SEC. ___. PRIVACY OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

**SEC. ___. INSPECTOR GENERAL.**

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

**SEC. ___. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.**

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

**SEC. ___. STANDARDS FOR CLOSING REMOVAL HEARINGS.**

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

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

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

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**SA 4734.** Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

**SEC. ___. CIVIL RIGHTS OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

**SEC. ___. PRIVACY OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner

that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

**SEC. ___. INSPECTOR GENERAL.**

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

**SEC. ___. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.**

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

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**SA 4735.** Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

**SEC. ___. CIVIL RIGHTS OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

**SEC. ___. PRIVACY OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

**SEC. ___. INSPECTOR GENERAL.**

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a

power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

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**SA 4736.** Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

**SEC. ___. CIVIL RIGHTS OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

**SEC. ___. PRIVACY OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

**SEC. ___. INSPECTOR GENERAL.**

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within

7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

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**SA 4737.** Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

**SEC. ___. CIVIL RIGHTS OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

**SEC. ___. PRIVACY OFFICER.**

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

**SEC. ___. INSPECTOR GENERAL.**

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

**SEC. ___. STANDARDS FOR CLOSING REMOVAL HEARINGS.**

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

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

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

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**SA 4738.** Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

Strike all after the first word in amendment #4471 and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

(b) DIVISIONS.—This Act is organized into three divisions as follows:

(1) DIVISION A.—Homeland Security.

(2) DIVISION B.—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) DIVISION C.—Federal Workforce Improvement.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

DIVISION A—HOMELAND SECURITY

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. Office of International Affairs.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.
Sec. 203. Protection of voluntarily furnished confidential information.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
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Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Research in conjunction with the Department of Health and Human Services and other departments.
Sec. 306. Homeland Security Advanced Research Projects Agency.
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Sec. 308. Homeland Security Institute.
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Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
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Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
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Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
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Sec. 501. Under Secretary for Emergency Preparedness and Response.
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Sec. 734. Reorganization authority.
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Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
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Sec. 2204. Student volunteer transit subsidy.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

Sec. 2301. Repeal of recertification requirements of senior executives.
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Sec. 2401. Academic training.
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Sec. 2403. Compensation time off for travel.
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**DIVISION D—NATIONAL COMMISSION**

**SEC. 2. DEFINITIONS.**

Unless the context clearly indicates otherwise, the following shall apply for purposes of this Act:

(1) AMERICAN HOMELAND OR HOMELAND.—Each of the terms ''American homeland'' or ''homeland'' mean the United States, in a geographic sense.

(2) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacitation or destruction of such systems or assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(3) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) EMERGENCY RESPONSE PROVIDERS.—The term ''emergency response providers'' includes Federal, State, and local government emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(6) EXECUTIVE AGENCY.—The term ''Executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) KEY RESOURCES.—The term ''key resources'' means structures, monuments or items of exceptional historical, social, cultural, or symbolic significance to the United States.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) MAJOR DISASTER.—The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**SEC. 4. EFFECTIVE DATE.**

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

## DIVISION A—HOMELAND SECURITY

## TITLE I—DEPARTMENT OF HOMELAND SECURITY

**SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) PRIMARY MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

(2) RESPONSIBILITIES.—In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) research and development, including efforts to counter chemical, biological, radiological, nuclear, and other emerging threats;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the private sector, and with other entities.

(3) OTHER RESPONSIBILITIES.—The Department shall also be responsible for carrying out other functions of entities transferred to the Department as provided by law, and the enumeration of the primary homeland security missions and responsibilities in this section does not impair or diminish the Department's non-homeland security missions and responsibilities.

**SEC. 102. SECRETARY; FUNCTIONS.**

(a) SECRETARY.—

(1) APPOINTMENT.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) VESTED FUNCTIONS.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may, except as otherwise provided in this Act, delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) shall have such functions, including the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out his responsibilities under this Act or otherwise provided by law; and

(3) may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

**SEC. 103. OTHER OFFICERS.**

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of chapter 33, subchapter 3, of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) An Under Secretary for Immigration Affairs.

(8) Not more than 16 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

(b) CHIEF OF IMMIGRATION POLICY.—

(1) IN GENERAL.—There shall be within the office of the Deputy Secretary of Homeland Security a Chief of Immigration Policy, who, under the authority of the Secretary, shall be responsible for—

(A) establishing national immigration policy and priorities; and

(B) coordinating immigration policy between the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security.

(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Immigration Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

(c) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Financial Officer.

(3) A Chief Information Officer.

(4) A Chief Human Capital Officer.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

**SEC. 104. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

## TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

**SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.**

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities under section 101 (b)(2)(A) and (d).

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, intelligence-related information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of threats to the homeland;

(B) detect and identify threats of terrorism against the United States and other threats to homeland security; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective measures and to support protective measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government agencies, and from State and local governments and private sector entities (pursuant to memoranda of understanding or other agreements entered into for that purpose).

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(6) To take or seek to effect measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public threat advisories; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information shared under this section is transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request and obtain additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility under section 101, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title VIII, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(6) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Department concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

**SEC. 202. ACCESS TO INFORMATION.**

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence and intelligence-related information, relating to threats of terrorism against the United States and to other areas of responsibility described in section 101 and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility under section 101;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

**SEC. 203. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.**

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

## TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

**SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

**SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

In assisting the Secretary with the responsibility specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) supporting all elements of the Department in research, development, testing, evaluation and deployment of science and technology that is applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism;

(3) to support the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding and conducting research and development relating to the same;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into joint sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401);

(9) collaborating with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a); and

(10) supporting United States leadership in science and technology.

**SEC. 303. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto, as provided in section 310.

(4)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

**SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(b) ESTABLISHMENT OF PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

**SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND OTHER DEPARTMENTS.**

With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as the Secretary may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

**SEC. 306. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.**

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(2) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established under this section.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology or the designee of that Under Secretary.

(b) PURPOSES.—The purposes of this section are to—

(1) establish the Homeland Security Advanced Research Projects Agency to prioritize and fund homeland security research and development using the acceleration fund; and

(2) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing and evaluation, and deployment of critical homeland security technologies; and

(B) support homeland security research and development.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003, and such sums as may be necessary in subsequent years.

(4) TRANSITION OF FUNDS.—With respect to such research, development, testing, and evaluation responsibilities under this section as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under paragraph (3) for the Fund, not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from nonhomeland security missions to the ports, waterways, and coastal security mission.

(d) RESPONSIBILITIES OF THE HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—The Homeland Security Advance Research Project Agency shall have the following responsibilities:

(1) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(2) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Homeland Security Advanced Research Projects Agency, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(3) To administer the Fund, including—

(A) issuing an annual multiagency program announcement soliciting proposals from government entities, federally funded research and development centers, industry, and academia;

(B) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(C) at the discretion of the HSARPA, assigning 1 or more program managers to oversee, administer, and execute a Fund project as the agent of HSARPA; and

(D) providing methods of funding, including grants, cooperative agreements, joint sponsorship agreements, or any other transaction.

(4) With respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions.

(5) In hiring personnel to assist in the administration of the HSARPA, have the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261) with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that the term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(6) Develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

**SEC. 307. MISCELLANEOUS AUTHORITIES RELATING TO NATIONAL LABORATORIES.**

(a) IN GENERAL.—The limitation of the number of employees of the Department of Energy national laboratories assigned to Washington, D.C. shall not apply to those employees who, at the request of the Secretary, are assigned, on a temporary basis, to assist in the establishment of the Department.

(b) DIRECT TASKING.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept direct tasking from the Secretary or his designee, consistent with resources provided, and perform such tasking on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

**SEC. 308. HOMELAND SECURITY INSTITUTE.**

Within the Directorate of Science and Technology there shall be established a Homeland Security Institute as a separate federally funded research and development center under the direction of the Under Secretary to perform policy and systems analysis, assist in the definition of standards and metrics, assist agencies with evaluating technologies for deployment, proposing risk management strategies based on technology developments, and performing other appropriate research and analysis to improve policy and decisionmaking as it relates to the mission of the Department. The Homeland Security Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

**SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.**

(a) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(b) JOINT SPONSORSHIP.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(c) ARRANGEMENTS.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(d) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subsection (a) or (b).

(e) LEAD AGENT.—

(1) IN GENERAL.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(2) FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a) (4) of the Federal Acquisition Regulation.

(f) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subsection (b).

(g) AUTHORITIES OF SECRETARY AND UNDER SECRETARY.—In connection with work involving the Department of Energy national laboratories or sites, the Secretary or Under Secretary for Science and Technology—

(1) may enter into joint sponsorship agreements with Department of Energy national laboratories or sites;

(2) may directly fund, task, and manage work at the Department of Energy national laboratories and sites; and

(3) may permit the director of any Department of Energy national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

**SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.**

(a) IN GENERAL.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 801(2)).

**SEC. 311. CLEARINGHOUSE.**

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall provide for a clearinghouse as a central, national point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such clearinghouse shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) SCREENINGS AND ASSESSMENTS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate; and

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government.

## TITLE IV—BORDER AND TRANSPORTATION SECURITY

**SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

There shall be in the Department a Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

**SEC. 402. RESPONSIBILITIES.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the primary responsibilities of the Under Secretary for Border and Transportation Security shall include—

(1) preventing the entry of terrorists and the instruments of terrorism into the United States;

(2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry;

(3) administering the immigration and naturalization laws of the United States, including the establishment of rules, in accordance with section 406, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

(4) administering the customs laws of the United States;

(5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce;

(6) carrying out the border patrol function; and

(7) administering and enforcing the functions of the Department under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

**SEC. 403. FUNCTIONS TRANSFERRED.**

(a) IN GENERAL.—In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto; and

(4) the Federal Law Enforcement Training Center of the Department of the Treasury.

(b) EXERCISE OF CUSTOMS REVENUE AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (a)(1), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph after the effective date of this Act.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930.

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised States of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974.

(J) The Trade Agreement Act of 1979.

(K) The North American Free Trade Area Implementation Act.

(L) The Uruguay Round Agreements Act.

(M) The Caribbean Basin Economic Recovery Act.

(N) The Andean Growth and Opportunity Act.

(O) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITIONS OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordation for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

**SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) The first section of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107-171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreements required by this subsection shall provide for the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Department to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(C) Authority under which the Secretary may perform functions that are delegated to the Animal and Plant Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(D) Authority under which the Secretary of Agriculture may use employees of the Department to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Subject to paragraph (2), out of any funds collected as fees under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall periodically transfer to the Secretary, in accordance with the agreement under subsection (e), funds for activities carried out by the Secretary for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 801(2)), the Secretary of Agriculture shall transfer to the Department not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2002 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following:

''(i) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

(j) CONFORMING AMENDMENTS.—

(1) Section 501 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e) is amended—

(A) in subsection (a)—

(i) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(ii) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(B) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(2) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

**SEC. 405. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.**

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

**SEC. 406. VISA ISSUANCE.**

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien;

(2) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(3) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

**SEC. 407. BORDER SECURITY AND IMMIGRATION WORKING GROUP.**

(a) ESTABLISHMENT.—The Secretary shall establish a border security and immigration working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation protection.

(b) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distributions of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced security for high-risk traffic, travel, and commerce;

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems; and

(6) coordinate the enforcement of all immigration laws.

(c) RELEVANT AGENCIES.—The Secretary shall consult with representatives of relevant agencies with respect to deliberations under subsection (b), and may include representative of such agencies in working group deliberations, as appropriate.

**SEC. 408. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.**

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

**SEC. 409. STUDY ON USE OF FOREIGN NATIONAL PERSONNEL IN VISA PROCESSING.**

The Secretary shall conduct a study on the use of foreign national personnel in visa processing to determine whether such uses are consistent with secure visa processing. The study shall review and make recommendations with respect to—

(1) the effects or possible effects on national security of the use of foreign national personnel in individual countries to perform data entry, process visas or visa applications, or in any way handle visas or visa application documents; and

(2) each United States mission abroad to determine whether United States consular services performed at the United States mission require different regulations on the use of foreign national personnel.

## TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

**SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

**SEC. 502. RESPONSIBILITIES.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

**SEC. 503. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

**SEC. 504. NUCLEAR INCIDENT RESPONSE.**

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

**SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and

Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

**SEC. 506. DEFINITION.**

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

## TITLE VI—MANAGEMENT

**SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

There shall be in the Department a Directorate for Management, headed by an Under Secretary for Management.

**SEC. 602. RESPONSIBILITIES.**

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

**SEC. 603. CHIEF FINANCIAL OFFICER.**

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 604. CHIEF INFORMATION OFFICER.**

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 605. CHIEF HUMAN CAPITAL OFFICER.**

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

## TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

### Subtitle A—Coordination with Non-Federal Entities

**SEC. 701. RESPONSIBILITIES.**

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

(4) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

### Subtitle B—Inspector General

**SEC. 710. AUTHORITY OF THE SECRETARY.**

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF COMPLETION OF AUDIT OR INVESTIGATION.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION.—The Secretary shall notify in writing the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and other appropriate committees of Congress within thirty days of any exercise of his authority under this section stating the reasons for such exercise.

**SEC. 711. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.**

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizures of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General

has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App.) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

**Subtitle C—United States Secret Service**

**SEC. 720. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

**Subtitle D—General Provisions**

**SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

''Sec.
''9701. Establishment of human resources management system.

**"§ 9701. Establishment of human resources management system**

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by

any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

**''97. Department of Homeland Security ..... 9701''.**

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. 731. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsection (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security. Whenever the President makes a determination specified under this subsection, the President shall notify the Senate and the House of Representatives of the reasons for such determination not less than 10 days prior to its issuance.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

**SEC. 732. ADVISORY COMMITTEES.**

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

**SEC. 733. ACQUISITIONS.**

(a) RESEARCH AND DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, he may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (h) of such section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

**SEC. 734. REORGANIZATION AUTHORITY.**

(a) REORGANIZATION PLAN.—

(1) IN GENERAL.—Whenever the President determines that changes in the organization of the Department are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan specifying the reorganizations that the President determines are necessary. Any such plan may provide for—

(A) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department;

(B) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, from the Department;

(C) the abolition of all or a part of an agency within the Department;

(D) the creation of a new agency or a new part of an agency within the Department; or

(E) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department.

(2) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit the reorganization plan to Congress together with the declaration that, with respect to each organization included in the plan, the President has found that the reorganization is necessary to carry out any policy set forth in this Act.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(3) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function;

(ii) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(iii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency;

(iv) describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan; and

(v) in the case of a transfer to or from the Department, address the impact of the proposed transfer on the ability of the affected agency to carry out its other functions and to accomplish its missions.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(4) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section. The President, or the designee of the President, may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (f)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this chapter—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(d) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are 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 resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3) of this section); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the 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.

(f) TERMS OF RESOLUTION.—For the purposes of subsections (e) through (i), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (a)(4). The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than 1 reorganization plan.

(g) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (f), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(h) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (g)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(i) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (h)) from further consideration of, a resolution with respect to a reorganization plan, 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. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or 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.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, 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.

(4) APPEALS.—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 with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

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

(B) the vote on final passage shall be on the resolution of the other House.

**SEC. 735. MISCELLANEOUS PROVISIONS.**

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

**SEC. 736. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

**SEC. 737. REGULATORY AUTHORITY.**

Except as specifically provided in this Act, this Act vests in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

**SEC. 738. USE OF APPROPRIATED FUNDS.**

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph 2(A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph 2(B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(g) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(h) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

**SEC. 739. FUTURE YEARS HOMELAND SECURITY PROGRAM.**

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as

the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

**SEC. 739A. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.**

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

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

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

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

**SEC. 739B. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.**

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

## Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

**SEC. 741. APPLICATION OF INDEMNIFICATION AUTHORITY.**

(a) IN GENERAL.—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter, or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

**SEC. 742. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.**

(a) IN GENERAL.—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 743;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification; and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

**SEC. 743. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.**

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or anti-terrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 742 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the

Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedures established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

**SEC. 744. CONGRESSIONAL NOTIFICATION.**

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85–804, as amended by section 742, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

**SEC. 745. DEFINITIONS.**

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms ''anti-terrorism technology'' and ''anti-terrorism service'' mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term ''act of terrorism'' means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, or ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term ''information technology'' has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

**Subtitle F—Federal Emergency Procurement Flexibility**

**SEC. 751. DEFINITION.**

In this title, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

**SEC. 752. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.**

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

**SEC. 753. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.**

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 752 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

**SEC. 754. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.**

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 752, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

**SEC. 755. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.**

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 752 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

**SEC. 756. USE OF STREAMLINED PROCEDURES.**

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 752, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 752.

**SEC. 757. REVIEW AND REPORT BY COMPTROLLER GENERAL.**

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

**SEC. 758. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.**

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

**Subtitle G—Coast Guard**

**SEC. 761. PRESERVING COAST GUARD MISSION PERFORMANCE.**

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (e.g., fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

**TITLE VIII—TRANSITION**

**SEC. 801. DEFINITIONS.**

In this title:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function; and

(2) TRANSITION PERIOD.—The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

**SEC. 802. TRANSFER OF AGENCIES.**

The transfer of an agency to the Department shall occur when the President so directs, but in no event later than the end of the transition period. When an agency is transferred, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the agency.

**SEC. 803. TRANSITIONAL AUTHORITIES.**

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—

(A) DESIGNATION.—During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act.

(B) COMPENSATION.—While serving as an acting officer under subparagraph (A), that officer shall receive compensation at the higher of the rate provided—

(i) by this Act for the office in which that officer acts; or

(ii) for the office held at the time of designation.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose—

(A) agency is transferred to the Department under this Act; and

(B) duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities held by or available in connection with the

agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget; and

(2) the Secretary shall have all functions—

(A) relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer; and

(B) vested in the Secretary by this Act or other law.

**SEC. 804. SAVINGS PROVISIONS.**

(a) COMPLETED ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) INCLUDED ACTIONS.—For purposes of paragraph (1), the term ''completed administrative actions'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions.

(e) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

(f) EMPLOYMENT PROVISIONS.—Except as otherwise provided in this Act, or under authority granted by this Act, the transfer under this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

**SEC. 805. TERMINATIONS.**

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred under this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

**SEC. 806. INCIDENTAL TRANSFERS.**

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

## TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

**SEC. 901. INSPECTOR GENERAL ACT.**

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraphs (1) and (2)—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears;

(2) by striking ''; and'' each place it appears and inserting a semicolon;

(3) by striking ''.,'' and inserting a coma; and

(4) by striking ''.;'' each place it appears and inserting a semicolon in each such place.

**SEC. 902. EXECUTIVE SCHEDULE.**

Chapter 53 of title 5, United States Code, is amended—

(1) in section 5312, by inserting after the item relating to the Secretary of Veterans Affairs the following:

''Secretary of Homeland Security.'';

(2) in section 5313, by inserting after the item relating to the Deputy Secretary of Transportation the following:

''Deputy Secretary of Homeland Security.'';

(3) in section 5314, by inserting after the item relating to the Under Secretary for Memorial Affairs, Department of Veterans Affairs the following:

''Under Secretaries, Department of Homeland Security.''; and

(4) in section 5315, by inserting at the end the following:

''Assistant Secretaries, Department of Homeland Security.

''General Counsel, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''Inspector General, Department of Homeland Security.''.

**SEC. 903. UNITED STATES SECRET SERVICE.**

(a) UNIFORMED DIVISION.—Section 202 of title 3, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Secretary of Homeland Security''.

(b) REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS.—Section 208 of title 3, United States Code, is amended by striking ''Secretary of Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(c) POWERS, AUTHORITIES, AND DUTIES.—Section 3056 of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

**SEC. 904. COAST GUARD.**

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking ''of Transportation'', each place it appears, and inserting ''of Homeland Security''; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

**SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.**

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' after ''in coordination with''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

**SEC. 906. SELECT AGENT REGISTRATION.**

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting ''(as defined in subsection (l)(9))'' after ''Secretary'';

(2) in section 351A(h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services'';

(3) in section 351A(l), by inserting after paragraph (8) the following:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''; and

(4) in section 352A(i)—

(A) by striking ''(1)'' the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 907. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

**SEC. 908. MILITARY ACTIVITIES.**

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in war fighting, the military defense of the United States, or other traditional military activities.

## DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

**SEC. 1001. SHORT TITLE.**

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

**SEC. 1002. DEFINITIONS.**

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

**SEC. 1003. TRANSFER OF IMMIGRATION AND NATURALIZATION SERVICE FUNCTIONS.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto, to be restructured so as to separate enforcement and service functions.

## TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

### Subtitle A—Organization

**SEC. 1101. ABOLITION OF INS.**

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

**SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting **"CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES"** after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

**"CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS**

**"SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary for Immigration Services appointed under section 113.

''(3) The Assistant Secretary for Enforcement appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy and administration functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b), but does not include the functions described in paragraphs (7) and (8) of section 131(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' shall have the same meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears (other than the proviso in section 103(a)(1) of the Immigration and Nationality Act) and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security of the Department of Homeland Security, as appropriate, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary for Immigration Affairs and the Under Secretary for Border and Transportation Security, as appropriate.

**SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

**"SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States with respect to any function within the jurisdiction of the Directorate. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(4) DEFINITION.—In this chapter, the term 'immigration policy and administration'

means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(i) by striking ''The Commissioner of Immigration and Naturalization'' and ''The Commissioner'' each place they appear and inserting ''The appropriate Under Secretary of the Department of Homeland Security''; and

(ii) except as provided in paragraph (1), by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''appropriate Under Secretary of the Department of Homeland Security''.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(C) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary for Immigration Affairs or the Under Secretary for Border and Transportation Security, as appropriate.

**SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

**''SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1105. BUREAU OF ENFORCEMENT.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

**"SEC. 114. BUREAU OF ENFORCEMENT.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary for Enforcement (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The detention function, except as specified in section 113(b)(2)(F).

''(B) The removal function.

''(C) The intelligence function.

''(D) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.**

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

**SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review.

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information

to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

**SEC. 1108. CLERICAL AMENDMENTS.**

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

**Subtitle B—Transition Provisions**

**SEC. 1111. TRANSFER OF FUNCTIONS.**

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—Except as provided in subsection (c) and title XIII, all functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—Except as provided in subsection (c), all functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

(c) SPECIAL RULE FOR BORDER PATROL AND INSPECTION FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the border patrol function, and primary and secondary immigration inspection functions, vested by statute in, or exercised by, the Attorney General, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Under Secretary for Border and Transportation in accordance with paragraphs (7) and (8) of section 131(b).

(2) REFERENCES.—With respect to the border patrol function and primary and secondary immigration inspection functions, references in this subtitle to—

(A) the Directorate shall be deemed to be references to the Directorate of Border and Transportation Security; and

(B) the Under Secretary shall be deemed to be references to the Under Secretary for Border and Transportation Security.

**SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.**

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the appropriate Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

**SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.**

The Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy and administration functions;

(B) immigration service functions;

(C) immigration enforcement functions (excluding the border patrol function and primary and secondary immigration inspection functions); and

(D) the border patrol function and primary and secondary immigration inspection functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

**SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.**

(a) DELEGATION TO THE DIRECTORATES.—The Secretary shall delegate—

(1) through the Under Secretary and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103)—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement; and

(2) the border patrol function and primary and secondary immigration inspection functions to the Under Secretary for Border and Transportation Security.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be made on a nonexclusive basis as the Secretary may determine may be necessary to ensure the faithful execution of the Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation Security, respectively, as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

**SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.**

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight

and control over the shared computer databases and systems and records management.

**SEC. 1116. SAVINGS PROVISIONS.**

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

**SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.**

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

**SEC. 1118. OTHER AUTHORITIES NOT AFFECTED.**

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

**SEC. 1119. TRANSITION FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement (except for the border patrol function and primary and secondary immigration inspection functions);

(iii) the transfer to the Directorate of Border and Transportation Protection of the border patrol function and primary and secondary immigration inspection functions; and

(iv) the transfer of such other functions as are required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security, as appropriate, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

**Subtitle C—Miscellaneous Provisions**

**SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.**

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

**SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

**SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

**''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

**Subtitle D—Effective Date**

**SEC. 1131. EFFECTIVE DATE.**

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

**TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION**

**SEC. 1201. UNACCOMPANIED ALIEN JUVENILES.**

(a) CUSTODY DETERMINATIONS.—

(1) IN GENERAL.—

(A) INITIAL CUSTODY AND CARE.—The custody and care of an unaccompanied alien juvenile shall be the responsibility of the Under Secretary of Immigration Affairs in the Department of Homeland Security or the Under Secretary of Border and Transportation Security, as determined under guidelines to be promulgated by the Secretary.

(B) TRANSFER OF CUSTODY AND CARE.—Unless the juvenile is described in subsection (b), the Department of Homeland Security shall transfer custody and care of that juvenile to the Office of Refugee Resettlement of the Department of Health and Human Services.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Directorate of Immigration Affairs shall retain or assume the custody and care of an unaccompanied alien juvenile—

(A) who has been charged with a felony;

(B) who has been convicted of a felony;

(C) who exhibits a violent or criminal behavior that endangers others; or

(D) with respect to whom the Secretary of Homeland Security has a substantial evidence to conclude that such juvenile endangers the national security of the United States.

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to subsection (a)(2), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the custody and care of unaccompanied alien juveniles who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such juvenile, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the juvenile are considered in decisions and actions relating to the custody and care of an unaccompanied alien juvenile;

(C) making placement determinations for all unaccompanied alien juveniles who are in Federal custody by reason of their immigration status;

(D) implementing placement determinations for such unaccompanied alien juveniles;

(E) implementing policies with respect to the care and placement of unaccompanied alien juveniles;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien juveniles;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien juveniles are housed;

(H) reuniting unaccompanied alien juveniles with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien juveniles;

(J) maintaining statistical information and other data on unaccompanied alien juveniles for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a juvenile's name, sex, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the juvenile came into Federal custody by reason of his or her immigration status;

(iii) information relating to the juvenile's placement, removal, or release from each facility in which the juvenile has resided;

(iv) in any case in which the juvenile is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the juvenile is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien juveniles; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien juveniles reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of Immigration Affairs of the Department of Homeland Security to ensure that the unaccompanied alien juveniles with respect to whom the placement determinations are made—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitative activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such juveniles upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to consider the use of the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien juveniles.

(c) APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN JUVENILES.—

(1) IN GENERAL.—An unaccompanied alien juvenile described in subsection (a)(2) may be placed in a facility appropriate for delinquent juveniles under conditions appropriate to the behavior of such juvenile.

(2) RESTRICTION ON DETENTION IN ADULT DETENTION FACILITIES.—To the maximum extent practicable, and consistent with the protection of the juvenile and others, an unaccompanied alien juvenile shall not be placed in an adult detention facility.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations or making enforcement determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State, as the case may be.

(e) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration and nationality laws of the United States with respect to the custody and care of unaccompanied alien juveniles that were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (i).

(f) OTHER TRANSITION MATTERS.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (i).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS.—The assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(h) DEFINITIONS.—In this section:

(1) LAWFULLY PRESENT IN THE UNITED STATES.—The term ''lawfully present in the United States'' means, with respect to an alien, an alien who is—

(A) an alien who is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) an alien who is a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act;

(C) an alien who is a special immigrant described in section 101(a)(27) of the Immigration and Nationality Act;

(D) an alien who is granted asylum under section 208 of that Act;

(E) a refugee who is admitted to the United States under section 207 of that Act;

(F) an alien who is paroled into the United States under section 212(d)(5) of that Act; or

(G) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect before April 1, 1997) or section 241(b)(3) of the Immigration and Nationality Act.

(2) PLACEMENT.—The term ''placement'' means the placement of an unaccompanied alien juvenile in either a detention facility or an alternative to such a facility.

(3) UNACCOMPANIED ALIEN JUVENILE.—The term ''unaccompanied alien juvenile'' means an alien who—

(A) is not lawfully present in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(i) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

## TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

### SEC. 1301. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1302.

### SEC. 1302. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

### SEC. 1303. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1302, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

## DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

## TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

### SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

### SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

### ''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.

''1401. Establishment of agency Chief Human Capital Officers.

''1402. Authority and functions of agency Chief Human Capital Officers.

**"§ 1401. Establishment of agency Chief Human Capital Officers**

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

**"§ 1402. Authority and functions of agency Chief Human Capital Officers**

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies, and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

**"14. Agency Chief Human Capital Officers ..... 1401".**

**SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

**SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

**SEC. 2105. EFFECTIVE DATE.**

This title shall take effect 180 days after the date of enactment of this division.

## TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

**SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.**

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

**SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.**

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end of the following:

''(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

**"§ 3319. Alternative ranking and selection procedures**

''(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by

striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

**SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.**

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

**''§ 3521. Definitions**

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

**''§ 3522. Agency plans; approval**

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

**''§ 3523. Authority to provide voluntary separation incentive payments**

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c)if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

**''§ 3524. Effect of subsequent employment with the Government**

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to he agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

**''§ 3525. Regulations**

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

**''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'';**

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.

''3522. Agency plans; approval.

''3523. Authority to provide voluntary separation incentive payments.

''3524. Effect of subsequent employment with the Government.

''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors.''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

**SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

## TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

**SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.**

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

**SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.**

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

## TITLE XXIV—ACADEMIC TRAINING

**SEC. 2401. ACADEMIC TRAINING.**

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

**''§ 4107. Academic degree training**

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining,

policy-making or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

**SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.**

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and''.

**SEC. 2403. COMPENSATION TIME OFF FOR TRAVEL.**

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

**''§ 5550b. Compensatory time off for travel**

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

**SEC. 2404. EXTENSION OF CUSTOMS USER FEES.**

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''December 31, 2007''.

## TITLE XXXI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

**SEC. 3101. ESTABLISHMENT OF COMMISSION.**

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

**SEC. 3102. PURPOSES.**

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

**SEC. 3103. COMPOSITION OF THE COMMISSION.**

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

**SEC. 3104. FUNCTIONS OF THE COMMISSION.**

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

**SEC. 3105. POWERS OF THE COMMISSION.**

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the vice chairperson of the Commission, the chairperson of any subcommittee created by

a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

**SEC. 3106. STAFF OF THE COMMISSION.**

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 3107. COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 3108. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.**

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

**SEC. 3109. REPORTS OF THE COMMISSION; TERMINATION.**

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

**SEC. 3110. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

**TITLE XXXII**

**SEC. . PRESERVATION OF THE PRESIDENTIAL NATIONAL SECURITY POWER.**

''Notwithstanding any other provision in this Act, nothing in this Act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and considerations as existed on the day of the terrorist attacks on September 11, 2001.''

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**SA 4739.** Mrs. CARNAHAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. GRANTS FOR FIREFIGHTING PERSONNEL.**

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

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

''(c) PERSONNEL GRANTS.—

''(1) IN GENERAL.—In addition to the grants authorized under subsection (b)(1), the Director may award grants to fire departments of a State for the purpose of hiring 'employees engaged in fire protection' as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203).

''(2) DURATION.—Grants awarded under this subsection shall be for a 3-year period.

''(3) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(4) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of a grant under this subsection shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

''(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

''(5) APPLICATION.—An application for a grant under this subsection, shall—

''(A) meet the requirements under subsection (b)(5);

''(B) include an explanation for the applicant's need for Federal assistance; and

''(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(6) MAINTENANCE OF EFFORT.—Grants awarded under this subsection shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.''; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

''(3) $1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).''.

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**SA 4740.** Mr. NELSON of Nebraska (for himself, Mr. CHAFFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes, as follows:

On page 96, strike line 2 and all that follows through page 109, line 13, and insert the following:

**SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

''Sec.
''9701. Establishment of human resources management system.

**"§ 9701. Establishment of human resources management system**

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 71, 72, 73, 77, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

**''97. Department of Homeland Security ..... 9701''.**

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. 731. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of title 5, United States Code, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(d) SAVINGS CLAUSE.—Notwithstanding any other provision of this Act, Title XXXII is null and void.

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**SA 4741.** Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place add the following:

**( ) SEC.—.**

Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386; 114 Stat. 1542) is amended—

(1) in subsection (a)(2)(A)(ii)—

(A) by striking ''February 17, 1999,'' and inserting ''May 17, 1996, May 7, 1997, February 17, 1999, December 15, 1999 (or who has or could have been subsequently joined in a suit filed on December 15, 1999 pursuant to Fed. R. Civ. P. 20(a)),'' and

(B) by striking ''or July 27, 2000'' and inserting ''April 3, 2000, October 27, 2000, or July 27, 2000'';

(2) by amending subsection (b)(1) to read as follows:

''(b)(1) JUDGMENTS AGAINST DESIGNATED STATE SPONSORS OF TERRORISM.—For purposes of funding the payments under subsection (a) in the case of judgments and sanctions entered against a government of a designated state sponsor of terrorism or its entities, the President shall vest and liquidate up to and not exceeding the amount of property of such government (including the agencies or instrumentalities controlled in fact by such government or in which such government owns directly or indirectly controlling interest) and sanctioned entities in the United States or any commonwealth, territory, or possession thereof that has been blocked pursuant to section 5(b)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1707–1702), or any other proclamation, order, or regulation issued thereunder.''

(3) by amending subsection (b)(2)(B) to read as follows:

''(B) the Iran Foreign Military Sales Program Account within the Foreign Military Sales Fund on the date of enactment of this Act (less amounts therein as to which the United States has an interest in subrogation arising prior to the date of enactment of this Act);''; and

(4) in subsection (c)—

(A) by inserting after the phrase ''to the extent of the payments'' the phrase ''made prior to the date of enactment of this Act''.

**SA 4742.** Mr. DASCHLE proposed an amendment to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

Strike all after the first word in amendment contained in the motion's instructions and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

(b) DIVISIONS.—This Act is organized into three divisions as follows:

(1) DIVISION A.—Homeland Security.

(2) DIVISION B.—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) DIVISION C.—Federal Workforce Improvement.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

DIVISION A—HOMELAND SECURITY

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. Office of International Affairs.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.
Sec. 203. Protection of voluntarily furnished confidential information.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Research in conjunction with the Department of Health and Human Services and other departments.
Sec. 306. Homeland Security Advanced Research Projects Agency.

Sec. 307. Miscellaneous authorities relating to national laboratories.
Sec. 308. Homeland Security Institute.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Clearinghouse.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Coordination of information and information technology.
Sec. 406. Visa issuance.
Sec. 407. Border security and immigration working group.
Sec. 408. Information on visa denials required to be entered into electronic data system.
Sec. 409. Study on use of foreign national personnel in visa processing.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Responsibilities.
Sec. 603. Chief Financial Officer.
Sec. 604. Chief Information Officer.
Sec. 605. Chief Human Capital Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.
Sec. 711. Law enforcement powers of Inspector General Agents.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of Human Resources Management System.
Sec. 731. Labor-management relations.
Sec. 732. Advisory committees.
Sec. 733. Acquisitions.
Sec. 734. Reorganization authority.
Sec. 735. Miscellaneous provisions.
Sec. 736. Authorization of appropriations.
Sec. 737. Regulatory authority.
Sec. 738. Use of appropriated funds.
Sec. 739. Future Year Homeland Security Program.
Sec. 739A. Bioterrorism Preparedness and Response Division.
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**DIVISION D—NATIONAL COMMISSION**

**SEC. 2. DEFINITIONS.**

Unless the context clearly indicates otherwise, the following shall apply for purposes of this Act:

(1) AMERICAN HOMELAND OR HOMELAND.—Each of the terms ''American homeland'' or ''homeland'' mean the United States, in a geographic sense.

(2) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacitation or destruction of such systems or assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(3) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) EMERGENCY RESPONSE PROVIDERS.—The term ''emergency response providers'' includes Federal, State, and local government emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(6) EXECUTIVE AGENCY.—The term ''Executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) KEY RESOURCES.—The term ''key resources'' means structures, monuments or items of exceptional historical, social, cultural, or symbolic significance to the United States.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) MAJOR DISASTER.—The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**SEC. 4. EFFECTIVE DATE.**

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

## DIVISION A—HOMELAND SECURITY

## TITLE I—DEPARTMENT OF HOMELAND SECURITY

**SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) PRIMARY MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

(2) RESPONSIBILITIES.—In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) research and development, including efforts to counter chemical, biological, radiological, nuclear, and other emerging threats;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the private sector, and with other entities.

(3) OTHER RESPONSIBILITIES.—The Department shall also be responsible for carrying out other functions of entities transferred to the Department as provided by law, and the enumeration of the primary homeland security missions and responsibilities in this section does not impair or diminish the Department's non-homeland security missions and responsibilities.

**SEC. 102. SECRETARY; FUNCTIONS.**

(a) SECRETARY.—

(1) APPOINTMENT.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) VESTED FUNCTIONS.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may, except as otherwise provided in this Act, delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) shall have such functions, including the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out his responsibilities under this Act or otherwise provided by law; and

(3) may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

**SEC. 103. OTHER OFFICERS.**

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of chapter 33, subchapter 3, of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) An Under Secretary for Immigration Affairs.

(8) Not more than 16 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

(b) CHIEF OF IMMIGRATION POLICY.—

(1) IN GENERAL.—There shall be within the office of the Deputy Secretary of Homeland Security a Chief of Immigration Policy, who, under the authority of the Secretary, shall be responsible for—

(A) establishing national immigration policy and priorities; and

(B) coordinating immigration policy between the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security.

(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Immigration Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

(c) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Financial Officer.

(3) A Chief Information Officer.

(4) A Chief Human Capital Officer.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

**SEC. 104. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

## TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

**SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.**

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities under section 101 (b)(2)(A) and (d).

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, intelligence-related information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of threats to the homeland;

(B) detect and identify threats of terrorism against the United States and other threats to homeland security; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective measures and to support protective measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government agencies, and from State and local governments and private sector entities (pursuant to memoranda of understanding or other agreements entered into for that purpose).

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(6) To take or seek to effect measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public threat advisories; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information shared under this section is transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request and obtain additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility under section 101, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title VIII, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(6) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Department concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

**SEC. 202. ACCESS TO INFORMATION.**

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence and intelligence-related information, relating to threats of terrorism against the United States and to other areas of responsibility described in section 101 and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility under section 101;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

**SEC. 203. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.**

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

## TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

### SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

### SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

In assisting the Secretary with the responsibility specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) supporting all elements of the Department in research, development, testing, evaluation and deployment of science and technology that is applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism;

(3) to support the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding and conducting research and development relating to the same;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into joint sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401);

(9) collaborating with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a); and

(10) supporting United States leadership in science and technology.

### SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto, as provided in section 310.

(4)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

### SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(b) ESTABLISHMENT OF PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

### SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND OTHER DEPARTMENTS.

With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as the Secretary may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

### SEC. 306. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(2) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established under this section.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology or the designee of that Under Secretary.

(b) PURPOSES.—The purposes of this section are to—

(1) establish the Homeland Security Advanced Research Projects Agency to prioritize and fund homeland security research and development using the acceleration fund; and

(2) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing and evaluation, and deployment of critical homeland security technologies; and

(B) support homeland security research and development.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003, and such sums as may be necessary in subsequent years.

(4) TRANSITION OF FUNDS.—With respect to such research, development, testing, and evaluation responsibilities under this section as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under paragraph (3) for the Fund, not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from nonhomeland security missions to the ports, waterways, and coastal security mission.

(d) RESPONSIBILITIES OF THE HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—The Homeland Security Advance Research Project Agency shall have the following responsibilities:

(1) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(2) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Homeland Security Advanced Research Projects Agency, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(3) To administer the Fund, including—

(A) issuing an annual multiagency program announcement soliciting proposals from government entities, federally funded research and development centers, industry, and academia;

(B) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(C) at the discretion of the HSARPA, assigning 1 or more program managers to oversee, administer, and execute a Fund project as the agent of HSARPA; and

(D) providing methods of funding, including grants, cooperative agreements, joint sponsorship agreements, or any other transaction.

(4) With respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions.

(5) In hiring personnel to assist in the administration of the HSARPA, have the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261) with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that the term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(6) Develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

**SEC. 307. MISCELLANEOUS AUTHORITIES RELATING TO NATIONAL LABORATORIES.**

(a) IN GENERAL.—The limitation of the number of employees of the Department of Energy national laboratories assigned to Washington, D.C. shall not apply to those employees who, at the request of the Secretary, are assigned, on a temporary basis, to assist in the establishment of the Department.

(b) DIRECT TASKING.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept direct tasking from the Secretary or his designee, consistent with resources provided, and perform such tasking on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

**SEC. 308. HOMELAND SECURITY INSTITUTE.**

Within the Directorate of Science and Technology there shall be established a Homeland Security Institute as a separate federally funded research and development center under the direction of the Under Secretary to perform policy and systems analysis, assist in the definition of standards and metrics, assist agencies with evaluating technologies for deployment, proposing risk management strategies based on technology developments, and performing other appropriate research and analysis to improve policy and decisionmaking as it relates to the mission of the Department. The Homeland Security Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

**SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.**

(a) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(b) JOINT SPONSORSHIP.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(c) ARRANGEMENTS.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(d) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subsection (a) or (b).

(e) LEAD AGENT.—

(1) IN GENERAL.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(2) FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a) (4) of the Federal Acquisition Regulation.

(f) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subsection (b).

(g) AUTHORITIES OF SECRETARY AND UNDER SECRETARY.—In connection with work involving the Department of Energy national laboratories or sites, the Secretary or Under Secretary for Science and Technology—

(1) may enter into joint sponsorship agreements with Department of Energy national laboratories or sites;

(2) may directly fund, task, and manage work at the Department of Energy national laboratories and sites; and

(3) may permit the director of any Department of Energy national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

**SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.**

(a) IN GENERAL.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 801(2)).

**SEC. 311. CLEARINGHOUSE.**

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall provide for a clearinghouse as a central, national point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such clearinghouse shall refer those seeking guidance on Federal funding, regulation, acquisition, or other

matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) SCREENINGS AND ASSESSMENTS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate; and

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government.

## TITLE IV—BORDER AND TRANSPORTATION SECURITY

### SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

### SEC. 402. RESPONSIBILITIES.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the primary responsibilities of the Under Secretary for Border and Transportation Security shall include—

(1) preventing the entry of terrorists and the instruments of terrorism into the United States;

(2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry;

(3) administering the immigration and naturalization laws of the United States, including the establishment of rules, in accordance with section 406, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

(4) administering the customs laws of the United States;

(5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce;

(6) carrying out the border patrol function; and

(7) administering and enforcing the functions of the Department under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

### SEC. 403. FUNCTIONS TRANSFERRED.

(a) IN GENERAL.—In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto; and

(4) the Federal Law Enforcement Training Center of the Department of the Treasury.

(b) EXERCISE OF CUSTOMS REVENUE AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (a)(1), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph after the effective date of this Act.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930.

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised States of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974.

(J) The Trade Agreement Act of 1979.

(K) The North American Free Trade Area Implementation Act.

(L) The Uruguay Round Agreements Act.

(M) The Caribbean Basin Economic Recovery Act.

(N) The Andean Growth and Opportunity Act.

(O) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITIONS OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordation for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

### SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) The first section of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107-171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreements required by this subsection shall provide for the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Department to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(C) Authority under which the Secretary may perform functions that are delegated to the Animal and Plant Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(D) Authority under which the Secretary of Agriculture may use employees of the Department to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Subject to paragraph (2), out of any funds collected as fees under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall periodically transfer to the Secretary, in accordance with the agreement under subsection (e), funds for activities carried out by the Secretary for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 801(2)), the Secretary of Agriculture shall transfer to the Department not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2002 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following:

''(i) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

(j) CONFORMING AMENDMENTS.—

(1) Section 501 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e) is amended—

(A) in subsection (a)—

(i) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(ii) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(B) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(2) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

**SEC. 405. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.**

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

**SEC. 406. VISA ISSUANCE.**

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien;

(2) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(3) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed

appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

**SEC. 407. BORDER SECURITY AND IMMIGRATION WORKING GROUP.**

(a) ESTABLISHMENT.—The Secretary shall establish a border security and immigration working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation protection.

(b) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distributions of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced security for high-risk traffic, travel, and commerce;

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems; and

(6) coordinate the enforcement of all immigration laws.

(c) RELEVANT AGENCIES.—The Secretary shall consult with representatives of relevant agencies with respect to deliberations under subsection (b), and may include representative of such agencies in working group deliberations, as appropriate.

**SEC. 408. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.**

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

**SEC. 409. STUDY ON USE OF FOREIGN NATIONAL PERSONNEL IN VISA PROCESSING.**

The Secretary shall conduct a study on the use of foreign national personnel in visa processing to determine whether such uses are consistent with secure visa processing. The study shall review and make recommendations with respect to—

(1) the effects or possible effects on national security of the use of foreign national personnel in individual countries to perform data entry, process visas or visa applications, or in any way handle visas or visa application documents; and

(2) each United States mission abroad to determine whether United States consular services performed at the United States mission require different regulations on the use of foreign national personnel.

## TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

**SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

**SEC. 502. RESPONSIBILITIES.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

**SEC. 503. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

**SEC. 504. NUCLEAR INCIDENT RESPONSE.**

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster,

or other emergency), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

**SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

**SEC. 506. DEFINITION.**

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

## TITLE VI—MANAGEMENT

**SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

There shall be in the Department a Directorate for Management, headed by an Under Secretary for Management.

**SEC. 602. RESPONSIBILITIES.**

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

**SEC. 603. CHIEF FINANCIAL OFFICER.**

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 604. CHIEF INFORMATION OFFICER.**

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 605. CHIEF HUMAN CAPITAL OFFICER.**

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

## TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

### Subtitle A—Coordination with Non-Federal Entities

**SEC. 701. RESPONSIBILITIES.**

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

(4) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

### Subtitle B—Inspector General

**SEC. 710. AUTHORITY OF THE SECRETARY.**

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF COMPLETION OF AUDIT OR INVESTIGATION.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION.—The Secretary shall notify in writing the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and other appropriate committees of Congress within thirty days of any exercise of his authority under this section stating the reasons for such exercise.

**SEC. 711. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.**

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizures of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear

Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App.) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

**Subtitle C—United States Secret Service**

**SEC. 720. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

**Subtitle D—General Provisions**

**SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**''CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

''Sec.
''9701. Establishment of human resources management system.

**''§ 9701. Establishment of human resources management system**

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

**''97. Department of Homeland Security ..... 9701''.**

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. 731. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsection (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security. Whenever the President makes a determination specified under this subsection, the President shall notify the Senate and the House of Representatives of the reasons for such determination not less than 10 days prior to its issuance.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

**SEC. 732. ADVISORY COMMITTEES.**

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

**SEC. 733. ACQUISITIONS.**

(a) RESEARCH AND DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, he may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (h) of such section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary

(not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

**SEC. 734. REORGANIZATION AUTHORITY.**

(a) REORGANIZATION PLAN.—

(1) IN GENERAL.—Whenever the President determines that changes in the organization of the Department are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan specifying the reorganizations that the President determines are necessary. Any such plan may provide for—

(A) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department;

(B) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, from the Department;

(C) the abolition of all or a part of an agency within the Department;

(D) the creation of a new agency or a new part of an agency within the Department; or

(E) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department.

(2) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit the reorganization plan to Congress together with the declaration that, with respect to each organization included in the plan, the President has found that the reorganization is necessary to carry out any policy set forth in this Act.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(3) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function;

(ii) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(iii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency;

(iv) describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan; and

(v) in the case of a transfer to or from the Department, address the impact of the proposed transfer on the ability of the affected agency to carry out its other functions and to accomplish its missions.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(4) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section. The President, or the designee of the President, may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (f)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this chapter—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(d) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are 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 resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3) of this section); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the 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.

(f) TERMS OF RESOLUTION.—For the purposes of subsections (e) through (i), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (a)(4). The blank spaces therein are to be filled appropriately. The

term does not include a resolution which specifies more than 1 reorganization plan.

(g) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (f), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(h) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (g)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(i) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (h)) from further consideration of, a resolution with respect to a reorganization plan, 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. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or 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.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, 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.

(4) APPEALS.—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 with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

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

(B) the vote on final passage shall be on the resolution of the other House.

**SEC. 735. MISCELLANEOUS PROVISIONS.**

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

**SEC. 736. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

**SEC. 737. REGULATORY AUTHORITY.**

Except as specifically provided in this Act, this Act vests in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

**SEC. 738. USE OF APPROPRIATED FUNDS.**

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph (A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph (B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(g) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(h) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

**SEC. 739. FUTURE YEAR HOMELAND SECURITY PROGRAM.**

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

**SEC. 739A. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.**

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

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

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

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

**SEC. 739B. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.**

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

**Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services**

**SEC. 741. APPLICATION OF INDEMNIFICATION AUTHORITY.**

(a) IN GENERAL.—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter, or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

**SEC. 742. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.**

(a) IN GENERAL.—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 743;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification; and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

**SEC. 743. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.**

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or anti-terrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 742 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedures established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

**SEC. 744. CONGRESSIONAL NOTIFICATION.**

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85–804, as amended by section 742, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

**SEC. 745. DEFINITIONS.**

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms ''anti-terrorism technology'' and ''anti-terrorism service'' mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term ''act of terrorism'' means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, or ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term ''information technology'' has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

## Subtitle F—Federal Emergency Procurement Flexibility

**SEC. 751. DEFINITION.**

In this title, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

**SEC. 752. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.**

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

**SEC. 753. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.**

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 752 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

**SEC. 754. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.**

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 752, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

**SEC. 755. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.**

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 752 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

**SEC. 756. USE OF STREAMLINED PROCEDURES.**

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 752, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 752.

**SEC. 757. REVIEW AND REPORT BY COMPTROLLER GENERAL.**

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

**SEC. 758. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.**

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

**Subtitle G—Coast Guard**

**SEC. 761. PRESERVING COAST GUARD MISSION PERFORMANCE.**

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (e.g., fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

**TITLE VIII—TRANSITION**

**SEC. 801. DEFINITIONS.**

In this title:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function; and

(2) TRANSITION PERIOD.—The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

**SEC. 802. TRANSFER OF AGENCIES.**

The transfer of an agency to the Department shall occur when the President so directs, but in no event later than the end of the transition period. When an agency is transferred, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the agency.

**SEC. 803. TRANSITIONAL AUTHORITIES.**

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—

(A) DESIGNATION.—During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act.

(B) COMPENSATION.—While serving as an acting officer under subparagraph (A), that officer shall receive compensation at the higher of the rate provided—

(i) by this Act for the office in which that officer acts; or

(ii) for the office held at the time of designation.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose—

(A) agency is transferred to the Department under this Act; and

(B) duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget; and

(2) the Secretary shall have all functions—

(A) relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer; and

(B) vested in the Secretary by this Act or other law.

**SEC. 804. SAVINGS PROVISIONS.**

(a) COMPLETED ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) INCLUDED ACTIONS.—For purposes of paragraph (1), the term ''completed administrative actions'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions.

(e) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

(f) EMPLOYMENT PROVISIONS.—Except as otherwise provided in this Act, or under authority granted by this Act, the transfer under this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

**SEC. 805. TERMINATIONS.**

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred under this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

**SEC. 806. INCIDENTAL TRANSFERS.**

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

## TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

**SEC. 901. INSPECTOR GENERAL ACT.**

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraphs (1) and (2)—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears;

(2) by striking ''; and'' each place it appears and inserting a semicolon;

(3) by striking ''.,'' and inserting a coma; and

(4) by striking '';;'' each place it appears and inserting a semicolon in each such place.

**SEC. 902. EXECUTIVE SCHEDULE.**

Chapter 53 of title 5, United States Code, is amended—

(1) in section 5312, by inserting after the item relating to the Secretary of Veterans Affairs the following:

''Secretary of Homeland Security.'';

(2) in section 5313, by inserting after the item relating to the Deputy Secretary of Transportation the following:

''Deputy Secretary of Homeland Security.'';

(3) in section 5314, by inserting after the item relating to the Under Secretary for Memorial Affairs, Department of Veterans Affairs the following:

''Under Secretaries, Department of Homeland Security.''; and

(4) in section 5315, by inserting at the end the following:

''Assistant Secretaries, Department of Homeland Security.

''General Counsel, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''Inspector General, Department of Homeland Security.''.

**SEC. 903. UNITED STATES SECRET SERVICE.**

(a) UNIFORMED DIVISION.—Section 202 of title 3, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Secretary of Homeland Security''.

(b) REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS.—Section 208 of title 3, United States Code, is amended by striking ''Secretary of Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(c) POWERS, AUTHORITIES, AND DUTIES.—Section 3056 of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

**SEC. 904. COAST GUARD.**

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking ''of Transportation'', each place it appears, and inserting ''of Homeland Security''; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

**SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.**

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' after ''in coordination with''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

**SEC. 906. SELECT AGENT REGISTRATION.**

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting ''(as defined in subsection (1)(9))'' after ''Secretary'';

(2) in section 351A(h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services'';

(3) in section 351A(1), by inserting after paragraph (8) the following:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''; and

(4) in section 352A(i)—

(A) by striking ''(1)'' the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking ''Secretary of Health and Human Services''

and inserting ''Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 907. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

**SEC. 908. MILITARY ACTIVITIES.**

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in war fighting, the military defense of the United States, or other traditional military activities.

## DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

**SEC. 1001. SHORT TITLE.**

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

**SEC. 1002. DEFINITIONS.**

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

**SEC. 1003. TRANSFER OF IMMIGRATION AND NATURALIZATION SERVICE FUNCTIONS.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto, to be restructured so as to separate enforcement and service functions.

## TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

### Subtitle A—Organization

**SEC. 1101. ABOLITION OF INS.**

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

**SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

**''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS**

**''SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary for Immigration Services appointed under section 113.

''(3) The Assistant Secretary for Enforcement appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy and administration functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b), but does not include the functions described in paragraphs (7) and (8) of section 131(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' shall have the same meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears (other than the proviso in section 103(a)(1) of the Immigration and Nationality Act) and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security of the Department of Homeland Security, as appropriate, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary for Immigration Affairs and the Under Secretary for Border and Transportation Security, as appropriate.

**SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

**''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States with respect to any function within the jurisdiction of the Directorate. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(4) DEFINITION.—In this chapter, the term 'immigration policy and administration' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(i) by striking ''The Commissioner of Immigration and Naturalization'' and ''The Commissioner'' each place they appear and inserting ''The appropriate Under Secretary of the Department of Homeland Security''; and

(ii) except as provided in paragraph (1), by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''appropriate Under Secretary of the Department of Homeland Security''.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(C) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary for Immigration Affairs or the Under Secretary for Border and Transportation Security, as appropriate.

**SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

**''SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the

location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1105. BUREAU OF ENFORCEMENT.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

**"SEC. 114. BUREAU OF ENFORCEMENT.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary for Enforcement (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The detention function, except as specified in section 113(b)(2)(F).

''(B) The removal function.

''(C) The intelligence function.

''(D) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.**

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

**SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review.

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

**SEC. 1108. CLERICAL AMENDMENTS.**

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

**Subtitle B—Transition Provisions**

**SEC. 1111. TRANSFER OF FUNCTIONS.**

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—Except as provided in subsection (c) and title XIII, all functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—Except as provided in subsection (c), all functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

(c) SPECIAL RULE FOR BORDER PATROL AND INSPECTION FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the border patrol function, and primary and secondary immigration inspection functions, vested by statute in, or exercised by, the Attorney General, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Under Secretary for Border and Transportation in accordance with paragraphs (7) and (8) of section 131(b).

(2) REFERENCES.—With respect to the border patrol function and primary and secondary immigration inspection functions, references in this subtitle to—

(A) the Directorate shall be deemed to be references to the Directorate of Border and Transportation Security; and

(B) the Under Secretary shall be deemed to be references to the Under Secretary for Border and Transportation Security.

**SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.**

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the appropriate Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

**SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.**

The Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy and administration functions;

(B) immigration service functions;

(C) immigration enforcement functions (excluding the border patrol function and primary and secondary immigration inspection functions); and

(D) the border patrol function and primary and secondary immigration inspection functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

**SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.**

(a) DELEGATION TO THE DIRECTORATES.—The Secretary shall delegate—

(1) through the Under Secretary and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103)—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement; and

(2) the border patrol function and primary and secondary immigration inspection functions to the Under Secretary for Border and Transportation Security.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be made on a nonexclusive basis as the Secretary may determine may be necessary to ensure the faithful execution of the Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation Security, respectively, as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

**SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.**

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further

measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

**SEC. 1116. SAVINGS PROVISIONS.**

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

**SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.**

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

**SEC. 1118. OTHER AUTHORITIES NOT AFFECTED.**

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

**SEC. 1119. TRANSITION FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement (except for the border patrol function and primary and secondary immigration inspection functions);

(iii) the transfer to the Directorate of Border and Transportation Protection of the border patrol function and primary and secondary immigration inspection functions; and

(iv) the transfer of such other functions as are required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security, as appropriate, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

**Subtitle C—Miscellaneous Provisions**

**SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.**

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the

United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

**SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

**SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

**''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

**Subtitle D—Effective Date**

**SEC. 1131. EFFECTIVE DATE.**

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

**TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION**

**SEC. 1201. UNACCOMPANIED ALIEN JUVENILES.**

(a) CUSTODY DETERMINATIONS.—

(1) IN GENERAL.—

(A) INITIAL CUSTODY AND CARE.—The custody and care of an unaccompanied alien juvenile shall be the responsibility of the Under Secretary of Immigration Affairs in the Department of Homeland Security or the Under Secretary of Border and Transportation Security, as determined under guidelines to be promulgated by the Secretary.

(B) TRANSFER OF CUSTODY AND CARE.—Unless the juvenile is described in subsection (b), the Department of Homeland Security shall transfer custody and care of that juvenile to the Office of Refugee Resettlement of the Department of Health and Human Services.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Directorate of Immigration Affairs shall retain or assume the custody and care of an unaccompanied alien juvenile—

(A) who has been charged with a felony;

(B) who has been convicted of a felony;

(C) who exhibits a violent or criminal behavior that endangers others; or

(D) with respect to whom the Secretary of Homeland Security has a substantial evidence to conclude that such juvenile endangers the national security of the United States.

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to subsection (a)(2), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the custody and care of unaccompanied alien juveniles who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such juvenile, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the juvenile are considered in decisions and actions relating to the custody and care of an unaccompanied alien juvenile;

(C) making placement determinations for all unaccompanied alien juveniles who are in Federal custody by reason of their immigration status;

(D) implementing placement determinations for such unaccompanied alien juveniles;

(E) implementing policies with respect to the care and placement of unaccompanied alien juveniles;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien juveniles;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien juveniles are housed;

(H) reuniting unaccompanied alien juveniles with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien juveniles;

(J) maintaining statistical information and other data on unaccompanied alien juveniles for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a juvenile's name, sex, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the juvenile came into Federal custody by reason of his or her immigration status;

(iii) information relating to the juvenile's placement, removal, or release from each facility in which the juvenile has resided;

(iv) in any case in which the juvenile is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the juvenile is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien juveniles; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien juveniles reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of Immigration Affairs of the Department of Homeland Security to ensure that the unaccompanied alien juveniles with respect to whom the placement determinations are made—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitative activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such juveniles upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to consider the use of the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien juveniles.

(c) APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN JUVENILES.—

(1) IN GENERAL.—An unaccompanied alien juvenile described in subsection (a)(2) may be placed in a facility appropriate for delinquent juveniles under conditions appropriate to the behavior of such juvenile.

(2) RESTRICTION ON DETENTION IN ADULT DETENTION FACILITIES.—To the maximum extent practicable, and consistent with the protection of the juvenile and others, an unaccompanied alien juvenile shall not be placed in an adult detention facility.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations or making enforcement determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State, as the case may be.

(e) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration and nationality laws of the United States with respect to the custody and care of unaccompanied alien juveniles that were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (i).

(f) OTHER TRANSITION MATTERS.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (i).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS.—The assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(h) DEFINITIONS.—In this section:

(1) LAWFULLY PRESENT IN THE UNITED STATES.—The term ''lawfully present in the United States'' means, with respect to an alien, an alien who is—

(A) an alien who is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) an alien who is a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act;

(C) an alien who is a special immigrant described in section 101(a)(27) of the Immigration and Nationality Act;

(D) an alien who is granted asylum under section 208 of that Act;

(E) a refugee who is admitted to the United States under section 207 of that Act;

(F) an alien who is paroled into the United States under section 212(d)(5) of that Act; or

(G) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect before April 1, 1997) or section 241(b)(3) of the Immigration and Nationality Act.

(2) PLACEMENT.—The term ''placement'' means the placement of an unaccompanied alien juvenile in either a detention facility or an alternative to such a facility.

(3) UNACCOMPANIED ALIEN JUVENILE.—The term ''unaccompanied alien juvenile'' means an alien who—

(A) is not lawfully present in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(i) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

## TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

### SEC. 1301. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1302.

### SEC. 1302. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

### SEC. 1303. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1302, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

## DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

## TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

### SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

**SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.**

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

**"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS**

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

**"§ 1401. Establishment of agency Chief Human Capital Officers**

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

**"§ 1402. Authority and functions of agency Chief Human Capital Officers**

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies, and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

**"14. Agency Chief Human Capital Officers ..... 1401".**

**SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

**SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

**SEC. 2105. EFFECTIVE DATE.**

This title shall take effect 180 days after the date of enactment of this division.

**TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT**

**SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.**

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

**SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.**

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end of the following:

''(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

**"§ 3319. Alternative ranking and selection procedures**

''(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska

Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

**SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.**

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

**''§ 3521. Definitions**

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

**''§ 3522. Agency plans; approval**

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

**''§ 3523. Authority to provide voluntary separation incentive payments**

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c)if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

**''§ 3524. Effect of subsequent employment with the Government**

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to he agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

**''§ 3525. Regulations**

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

**''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'';**

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.

''3522. Agency plans; approval.

''3523. Authority to provide voluntary separation incentive payments.

''3524. Effect of subsequent employment with the Government.

''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors.''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

**SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

## TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

**SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.**

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

**SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.**

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

## TITLE XXIV—ACADEMIC TRAINING

**SEC. 2401. ACADEMIC TRAINING.**

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

**''§ 4107. Academic degree training**

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or

qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

**SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.**

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and''.

**SEC. 2403. COMPENSATION TIME OFF FOR TRAVEL.**

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

**''§ 5550b. Compensatory time off for travel**

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

**SEC. 2404. EXTENSION OF CUSTOMS USER FEES.**

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''December 31, 2007''.

## TITLE XXXI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

**SEC. 3101. ESTABLISHMENT OF COMMISSION.**

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

**SEC. 3102. PURPOSES.**

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

**SEC. 3103. COMPOSITION OF THE COMMISSION.**

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

**SEC. 3104. FUNCTIONS OF THE COMMISSION.**

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

**SEC. 3105. POWERS OF THE COMMISSION.**

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses

and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission the Vice Chairperson the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

**SEC. 3106. STAFF OF THE COMMISSION.**

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 3107. COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 3108. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.**

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

**SEC. 3109. REPORTS OF THE COMMISSION; TERMINATION.**

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

**SEC. 3110. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

**TITLE XXXII**

**SEC. ____. PRESERVATION OF THE PRESIDENTIAL NATIONAL SECURITY POWER**

''Notwithstanding any other provision of this Act, nothing in this Act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and consideration as existed on the day of the terrorist attacks on September 11, 2001.

These sections shall take effect one day after date of enactment.

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**SA 4743.** Mr. DASCHLE (for himself, Mr. NELSON of Nebraska, Mr. CHAFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4742 proposed by Mr. DASCHLE to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

On page 96, strike line 2 and all that follows through page 109, line 13, and insert the following:

**SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

''Sec.
''9701. Establishment of human resources management system.

**"§ 9701. Establishment of human resources management system**

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 71, 72, 73, 77, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

**"97. Department of Homeland Security ..... 9701".**

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. 731. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of title 5, United States Code, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(d) SAVINGS CLAUSE.—Notwithstanding any other provision of this Act, Title XXXII is null and void.

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**SA 4744.** Mr. DASCHLE submitted an amendment intended to be proposed to the language proposed to be stricken by amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word in H.R. 5005 and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

(b) DIVISIONS.—This Act is organized into three divisions as follows:

(1) DIVISION A.—Homeland Security.

(2) DIVISION B.—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) DIVISION C.—Federal Workforce Improvement.

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


Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

DIVISION A—HOMELAND SECURITY

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. Office of International Affairs.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.
Sec. 203. Protection of voluntarily furnished confidential information.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Research in conjunction with the Department of Health and Human Services and other departments.
Sec. 306. Homeland Security Advanced Research Projects Agency.
Sec. 307. Miscellaneous authorities relating to national laboratories.
Sec. 308. Homeland Security Institute.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Clearinghouse.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Coordination of information and information technology.
Sec. 406. Visa issuance.
Sec. 407. Border security and immigration working group.
Sec. 408. Information on visa denials required to be entered into electronic data system.
Sec. 409. Study on use of foreign national personnel in visa processing.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Responsibilities.
Sec. 603. Chief Financial Officer.
Sec. 604. Chief Information Officer.
Sec. 605. Chief Human Capital Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.
Sec. 711. Law enforcement powers of Inspector General Agents.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of Human Resources Management System.
Sec. 731. Labor-management relations.
Sec. 732. Advisory committees.
Sec. 733. Acquisitions.
Sec. 734. Reorganization authority.
Sec. 735. Miscellaneous provisions.
Sec. 736. Authorization of appropriations.
Sec. 737. Regulatory authority.
Sec. 738. Use of appropriated funds.
Sec. 739. Future Year Homeland Security Program.
Sec. 739A. Bioterrorism Preparedness and Response Division.
Sec. 739B. Coordination with the Department of Health and Human Services under the Public Health Service Act.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

Sec. 741. Application of indemnification authority.
Sec. 742. Application of indemnification authority to State and local government contractors.
Sec. 743. Procurements of anti-terrorism technologies and anti-terrorism services by State and local governments through Federal contracts.
Sec. 744. Congressional notification.
Sec. 745. Definitions.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 751. Definition.
Sec. 752. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 753. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 754. Increased micro-purchase threshold for certain procurements.
Sec. 755. Application of certain commercial items authorities to certain procurements.
Sec. 756. Use of streamlined procedures.
Sec. 757. Review and report by Comptroller General.
Sec. 758. Identification of new entrants into the Federal marketplace.

Subtitle G—Coast Guard

Sec. 761. Preserving Coast Guard mission performance.

TITLE VIII—TRANSITION
Sec. 801. Definitions.
Sec. 802. Transfer of agencies.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.
TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS
Sec. 901. Inspector General Act.
Sec. 902. Executive schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Select agent registration.
Sec. 907. National Bio-Weapons Defense Analysis Center.
Sec. 908. Military activities.
DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002
Sec. 1001. Short title.
Sec. 1002. Definitions.
Sec. 1003. Transfer of Immigration and Naturalization Service functions.
TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS
Subtitle A—Organization
Sec. 1101. Abolition of Immigration and Naturalization Service.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.
Subtitle B—Transition Provisions
Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Other authorities not affected.
Sec. 1119. Transition funding.
Subtitle C—Miscellaneous Provisions
Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.
Subtitle D—Effective Date
Sec. 1131. Effective date.
TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION
Sec. 1201. Unaccompanied alien juveniles.
TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Sec. 1301. Legal status of EOIR.
Sec. 1302. Authorities of the Attorney General.
Sec. 1303. Statutory construction.
DIVISION C—FEDERAL WORKFORCE IMPROVEMENT
TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS
Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic human capital management.
Sec. 2105. Effective date.
TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT
Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.
TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE
Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.
TITLE XXIV—ACADEMIC TRAINING
Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensation time off for travel.
Sec. 2404. Customs User Fees Extension.
DIVISION D—NATIONAL COMMISSION

**SEC. 2. DEFINITIONS.**

Unless the context clearly indicates otherwise, the following shall apply for purposes of this Act:

(1) AMERICAN HOMELAND OR HOMELAND.—Each of the terms ''American homeland'' or ''homeland'' mean the United States, in a geographic sense.

(2) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacitation or destruction of such systems or assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(3) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) EMERGENCY RESPONSE PROVIDERS.—The term ''emergency response providers'' includes Federal, State, and local government emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(6) EXECUTIVE AGENCY.—The term ''Executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) KEY RESOURCES.—The term ''key resources'' means structures, monuments or items of exceptional historical, social, cultural, or symbolic significance to the United States.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) MAJOR DISASTER.—The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**SEC. 4. EFFECTIVE DATE.**

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

## DIVISION A—HOMELAND SECURITY

## TITLE I—DEPARTMENT OF HOMELAND SECURITY

**SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) PRIMARY MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

(2) RESPONSIBILITIES.—In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) research and development, including efforts to counter chemical, biological, radiological, nuclear, and other emerging threats;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the private sector, and with other entities.

(3) OTHER RESPONSIBILITIES.—The Department shall also be responsible for carrying out other functions of entities transferred to the Department as provided by law, and the enumeration of the primary homeland security missions and responsibilities in this section does not impair or diminish the Department's non-homeland security missions and responsibilities.

**SEC. 102. SECRETARY; FUNCTIONS.**

(a) SECRETARY.—

(1) APPOINTMENT.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) VESTED FUNCTIONS.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may, except as otherwise provided in this Act, delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) shall have such functions, including the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out his responsibilities under this Act or otherwise provided by law; and

(3) may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

**SEC. 103. OTHER OFFICERS.**

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of chapter 33, subchapter 3, of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) An Under Secretary for Immigration Affairs.

(8) Not more than 16 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

(b) CHIEF OF IMMIGRATION POLICY.—

(1) IN GENERAL.—There shall be within the office of the Deputy Secretary of Homeland Security a Chief of Immigration Policy, who, under the authority of the Secretary, shall be responsible for—

(A) establishing national immigration policy and priorities; and

(B) coordinating immigration policy between the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security.

(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Immigration Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

(c) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Financial Officer.

(3) A Chief Information Officer.

(4) A Chief Human Capital Officer.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

**SEC. 104. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

## TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

**SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.**

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities under section 101 (b)(2)(A) and (d).

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, intelligence-related information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of threats to the homeland;

(B) detect and identify threats of terrorism against the United States and other threats to homeland security; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective measures and to support protective measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government agencies, and from State and local governments and private sector entities (pursuant to memoranda of understanding or other agreements entered into for that purpose).

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(6) To take or seek to effect measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public threat advisories; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private

sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information shared under this section is transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request and obtain additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility under section 101, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title VIII, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(6) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Department concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

**SEC. 202. ACCESS TO INFORMATION.**

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence and intelligence-related information, relating to threats of terrorism against the United States and to other areas of responsibility described in section 101 and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility under section 101;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section

3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

**SEC. 203. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.**

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

## TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

**SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

**SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

In assisting the Secretary with the responsibility specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) supporting all elements of the Department in research, development, testing, evaluation and deployment of science and technology that is applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism;

(3) to support the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding and conducting research and development relating to the same;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into joint sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401);

(9) collaborating with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a); and

(10) supporting United States leadership in science and technology.

**SEC. 303. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto, as provided in section 310.

(4)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

**SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(b) ESTABLISHMENT OF PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

**SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND OTHER DEPARTMENTS.**

With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as the Secretary may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

**SEC. 306. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.**

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(2) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established under this section.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology or the designee of that Under Secretary.

(b) PURPOSES.—The purposes of this section are to—

(1) establish the Homeland Security Advanced Research Projects Agency to prioritize and fund homeland security research and development using the acceleration fund; and

(2) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing and evaluation, and deployment of critical homeland security technologies; and

(B) support homeland security research and development.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003, and such sums as may be necessary in subsequent years.

(4) TRANSITION OF FUNDS.—With respect to such research, development, testing, and evaluation responsibilities under this section as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under paragraph (3) for the Fund, not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from nonhomeland security missions to the ports, waterways, and coastal security mission.

(d) RESPONSIBILITIES OF THE HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—The Homeland Security Advance Research Project Agency shall have the following responsibilities:

(1) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(2) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Homeland Security Advanced Research Projects Agency, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(3) To administer the Fund, including—

(A) issuing an annual multiagency program announcement soliciting proposals from government entities, federally funded research and development centers, industry, and academia;

(B) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(C) at the discretion of the HSARPA, assigning 1 or more program managers to oversee, administer, and execute a Fund project as the agent of HSARPA; and

(D) providing methods of funding, including grants, cooperative agreements, joint sponsorship agreements, or any other transaction.

(4) With respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions.

(5) In hiring personnel to assist in the administration of the HSARPA, have the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261) with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that the term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(6) Develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

**SEC. 307. MISCELLANEOUS AUTHORITIES RELATING TO NATIONAL LABORATORIES.**

(a) IN GENERAL.—The limitation of the number of employees of the Department of Energy national laboratories assigned to Washington, D.C. shall not apply to those employees who, at the request of the Secretary, are assigned, on a temporary basis, to assist in the establishment of the Department.

(b) DIRECT TASKING.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept direct tasking from the Secretary or his designee, consistent with resources provided, and perform such tasking on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

**SEC. 308. HOMELAND SECURITY INSTITUTE.**

Within the Directorate of Science and Technology there shall be established a Homeland Security Institute as a separate federally funded research and development center under the direction of the Under Secretary to perform policy and systems analysis, assist in the definition of standards and metrics, assist agencies with evaluating technologies for deployment, proposing risk management strategies based on technology developments, and performing other appropriate research and analysis to improve policy and decisionmaking as it relates to the mission of the Department. The Homeland Security Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

**SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.**

(a) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(b) JOINT SPONSORSHIP.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(c) ARRANGEMENTS.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(d) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subsection (a) or (b).

(e) LEAD AGENT.—

(1) IN GENERAL.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(2) FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a) (4) of the Federal Acquisition Regulation.

(f) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subsection (b).

(g) AUTHORITIES OF SECRETARY AND UNDER SECRETARY.—In connection with work involving the Department of Energy national laboratories or sites, the Secretary or Under Secretary for Science and Technology—

(1) may enter into joint sponsorship agreements with Department of Energy national laboratories or sites;

(2) may directly fund, task, and manage work at the Department of Energy national laboratories and sites; and

(3) may permit the director of any Department of Energy national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

**SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.**

(a) IN GENERAL.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 801(2)).

**SEC. 311. CLEARINGHOUSE.**

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall provide for a clearinghouse as a central, national point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such clearinghouse shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) SCREENINGS AND ASSESSMENTS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate; and

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government.

## TITLE IV—BORDER AND TRANSPORTATION SECURITY

**SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

There shall be in the Department a Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

**SEC. 402. RESPONSIBILITIES.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the primary responsibilities of the Under Secretary for Border and Transportation Security shall include—

(1) preventing the entry of terrorists and the instruments of terrorism into the United States;

(2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry;

(3) administering the immigration and naturalization laws of the United States, including the establishment of rules, in accordance with section 406, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

(4) administering the customs laws of the United States;

(5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce;

(6) carrying out the border patrol function; and

(7) administering and enforcing the functions of the Department under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

**SEC. 403. FUNCTIONS TRANSFERRED.**

(a) IN GENERAL.—In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto; and

(4) the Federal Law Enforcement Training Center of the Department of the Treasury.

(b) EXERCISE OF CUSTOMS REVENUE AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (a)(1), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph after the effective date of this Act.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930.

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised States of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974.

(J) The Trade Agreement Act of 1979.

(K) The North American Free Trade Area Implementation Act.

(L) The Uruguay Round Agreements Act.

(M) The Caribbean Basin Economic Recovery Act.

(N) The Andean Growth and Opportunity Act.

(O) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITIONS OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordation for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

**SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) The first section of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107-171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreements required by this subsection shall provide for the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Department to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(C) Authority under which the Secretary may perform functions that are delegated to the Animal and Plant Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(D) Authority under which the Secretary of Agriculture may use employees of the Department to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Subject to paragraph (2), out of any funds collected as fees under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall periodically transfer to the Secretary, in accordance with the agreement under subsection (e), funds for activities carried out by the Secretary for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 801(2)), the Secretary of Agriculture shall transfer to the Department not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2002 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following:

''(i) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

(j) CONFORMING AMENDMENTS.—

(1) Section 501 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e) is amended—

(A) in subsection (a)—

(i) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(ii) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(B) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(2) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

**SEC. 405. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.**

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

**SEC. 406. VISA ISSUANCE.**

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of

such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien;

(2) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(3) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

**SEC. 407. BORDER SECURITY AND IMMIGRATION WORKING GROUP.**

(a) ESTABLISHMENT.—The Secretary shall establish a border security and immigration working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation protection.

(b) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distributions of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced security for high-risk traffic, travel, and commerce;

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems; and

(6) coordinate the enforcement of all immigration laws.

(c) RELEVANT AGENCIES.—The Secretary shall consult with representatives of relevant agencies with respect to deliberations under subsection (b), and may include representative of such agencies in working group deliberations, as appropriate.

**SEC. 408. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.**

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the

information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

**SEC. 409. STUDY ON USE OF FOREIGN NATIONAL PERSONNEL IN VISA PROCESSING.**

The Secretary shall conduct a study on the use of foreign national personnel in visa processing to determine whether such uses are consistent with secure visa processing. The study shall review and make recommendations with respect to—

(1) the effects or possible effects on national security of the use of foreign national personnel in individual countries to perform data entry, process visas or visa applications, or in any way handle visas or visa application documents; and

(2) each United States mission abroad to determine whether United States consular services performed at the United States mission require different regulations on the use of foreign national personnel.

## TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

**SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

**SEC. 502. RESPONSIBILITIES.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

**SEC. 503. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

**SEC. 504. NUCLEAR INCIDENT RESPONSE.**

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

**SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

**SEC. 506. DEFINITION.**

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

## TITLE VI—MANAGEMENT

**SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

There shall be in the Department a Directorate for Management, headed by an Under Secretary for Management.

**SEC. 602. RESPONSIBILITIES.**

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

**SEC. 603. CHIEF FINANCIAL OFFICER.**

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 604. CHIEF INFORMATION OFFICER.**

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

**SEC. 605. CHIEF HUMAN CAPITAL OFFICER.**

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

## TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

### Subtitle A—Coordination with Non-Federal Entities

**SEC. 701. RESPONSIBILITIES.**

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating the Federal Government's communications and systems of communications

relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

(4) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

**Subtitle B—Inspector General**

**SEC. 710. AUTHORITY OF THE SECRETARY.**

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF COMPLETION OF AUDIT OR INVESTIGATION.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION.—The Secretary shall notify in writing the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and other appropriate committees of Congress within thirty days of any exercise of his authority under this section stating the reasons for such exercise.

**SEC. 711. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.**

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizures of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App.) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

**Subtitle C—United States Secret Service**

**SEC. 720. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

**Subtitle D—General Provisions**

**SEC. 730. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

"Sec.
"9701. Establishment of human resources management system.

**"§ 9701. Establishment of human resources management system**

"(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department.

"(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

"(1) be flexible;

"(2) be contemporary;

"(3) not waive, modify, or otherwise affect—

"(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

"(B) any provision of section 2302, relating to prohibited personnel practices;

"(C)(i) any provision of law referred to in section 2302(b)(1); or

"(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

"(I) providing for equal employment opportunity through affirmative action; or

"(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

"(D) any other provision of this part (as described in subsection (c)); or

"(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

"(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

"(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

"(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

"(1) subparts A, B, E, G, and H of this part; and

"(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

"(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

"(1) to modify the pay of any employee who serves in—

"(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

"(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

"(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

"(3) to exempt any employee from the application of such section 5307.

"(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

"(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

"(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

"(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

"(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

"(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

"(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

"(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

"(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

"(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

"(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

"(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

"(ii) give each employee representative adequate access to information to make that participation productive.

"(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

"(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

"(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

"(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

"(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

"(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

"(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

"(A) shall be issued only after consultation with the Merit Systems Protection Board;

"(B) shall ensure the availability of procedures which shall—

"(i) be consistent with requirements of due process; and

"(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

"(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

"(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.".

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

**"97. Department of Homeland Security ..... 9701".**

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. 731. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their

primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsection (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security. Whenever the President makes a determination specified under this subsection, the President shall notify the Senate and the House of Representatives of the reasons for such determination not less than 10 days prior to its issuance.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

**SEC. 732. ADVISORY COMMITTEES.**

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

**SEC. 733. ACQUISITIONS.**

(a) RESEARCH AND DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, he may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (h) of such section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

**SEC. 734. REORGANIZATION AUTHORITY.**

(a) REORGANIZATION PLAN.—

(1) IN GENERAL.—Whenever the President determines that changes in the organization of the Department are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan specifying the reorganizations that the President determines are necessary. Any such plan may provide for—

(A) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department;

(B) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, from the Department;

(C) the abolition of all or a part of an agency within the Department;

(D) the creation of a new agency or a new part of an agency within the Department; or

(E) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department.

(2) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit the reorganization plan to Congress together with the declaration that, with respect to each organization included in the plan, the President has found that the reorganization is necessary to carry out any policy set forth in this Act.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(3) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function;

(ii) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(iii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency;

(iv) describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan; and

(v) in the case of a transfer to or from the Department, address the impact of the proposed transfer on the ability of the affected agency to carry out its other functions and to accomplish its missions.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(4) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section. The President, or the designee of the President, may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the

functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (f)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this chapter—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(d) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are 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 resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3) of this section); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the 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.

(f) TERMS OF RESOLUTION.—For the purposes of subsections (e) through (i), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (a)(4). The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than 1 reorganization plan.

(g) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (f), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(h) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (g)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(i) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (h)) from further consideration of, a resolution with respect to a reorganization plan, 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. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or 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.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, 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.

(4) APPEALS.—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 with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

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

(B) the vote on final passage shall be on the resolution of the other House.

**SEC. 735. MISCELLANEOUS PROVISIONS.**

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

**SEC. 736. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

**SEC. 737. REGULATORY AUTHORITY.**

Except as specifically provided in this Act, this Act vests in the Secretary or any other

Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

**SEC. 738. USE OF APPROPRIATED FUNDS.**

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph (2)(A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph (2)(B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(g) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(h) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

**SEC. 739. FUTURE YEARS HOMELAND SECURITY PROGRAM.**

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

**SEC. 739A. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.**

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

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

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

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

**SEC. 739B. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.**

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of

Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

**Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services**

**SEC. 741. APPLICATION OF INDEMNIFICATION AUTHORITY.**

(a) IN GENERAL.—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter, or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

**SEC. 742. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.**

(a) IN GENERAL.—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 743;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification; and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

**SEC. 743. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.**

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or anti-terrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 742 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedures established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

**SEC. 744. CONGRESSIONAL NOTIFICATION.**

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85–804, as amended by section 742, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

**SEC. 745. DEFINITIONS.**

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms ''anti-terrorism technology'' and ''anti-terrorism service'' mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term ''act of terrorism'' means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, or ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term ''information technology'' has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

**Subtitle F—Federal Emergency Procurement Flexibility**

**SEC. 751. DEFINITION.**

In this title, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

**SEC. 752. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.**

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological

attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

**SEC. 753. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.**

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 752 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

**SEC. 754. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.**

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 752, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

**SEC. 755. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.**

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 752 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

**SEC. 756. USE OF STREAMLINED PROCEDURES.**

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 752, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 752.

**SEC. 757. REVIEW AND REPORT BY COMPTROLLER GENERAL.**

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

**SEC. 758. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.**

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

**Subtitle G—Coast Guard**

**SEC. 761. PRESERVING COAST GUARD MISSION PERFORMANCE.**

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (e.g., fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

## TITLE VIII—TRANSITION

**SEC. 801. DEFINITIONS.**

In this title:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function; and

(2) TRANSITION PERIOD.—The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

**SEC. 802. TRANSFER OF AGENCIES.**

The transfer of an agency to the Department shall occur when the President so directs, but in no event later than the end of the transition period. When an agency is transferred, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the agency.

**SEC. 803. TRANSITIONAL AUTHORITIES.**

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—

(A) DESIGNATION.—During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act.

(B) COMPENSATION.—While serving as an acting officer under subparagraph (A), that officer shall receive compensation at the higher of the rate provided—

(i) by this Act for the office in which that officer acts; or

(ii) for the office held at the time of designation.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose—

(A) agency is transferred to the Department under this Act; and

(B) duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget; and

(2) the Secretary shall have all functions—

(A) relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer; and

(B) vested in the Secretary by this Act or other law.

**SEC. 804. SAVINGS PROVISIONS.**

(a) COMPLETED ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) INCLUDED ACTIONS.—For purposes of paragraph (1), the term ''completed administrative actions'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions.

(e) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

(f) EMPLOYMENT PROVISIONS.—Except as otherwise provided in this Act, or under authority granted by this Act, the transfer under this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

**SEC. 805. TERMINATIONS.**

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred under this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

**SEC. 806. INCIDENTAL TRANSFERS.**

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

## TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

**SEC. 901. INSPECTOR GENERAL ACT.**

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraphs (1) and (2)—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears;

(2) by striking ''; and'' each place it appears and inserting a semicolon;

(3) by striking ''.,'' and inserting a coma; and

(4) by striking '';;'' each place it appears and inserting a semicolon in each such place.

**SEC. 902. EXECUTIVE SCHEDULE.**

Chapter 53 of title 5, United States Code, is amended—

(1) in section 5312, by inserting after the item relating to the Secretary of Veterans Affairs the following:

''Secretary of Homeland Security.'';

(2) in section 5313, by inserting after the item relating to the Deputy Secretary of Transportation the following:

''Deputy Secretary of Homeland Security.'';

(3) in section 5314, by inserting after the item relating to the Under Secretary for Memorial Affairs, Department of Veterans Affairs the following:

''Under Secretaries, Department of Homeland Security.''; and

(4) in section 5315, by inserting at the end the following:

''Assistant Secretaries, Department of Homeland Security.

''General Counsel, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''Inspector General, Department of Homeland Security.''.

**SEC. 903. UNITED STATES SECRET SERVICE.**

(a) UNIFORMED DIVISION.—Section 202 of title 3, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Secretary of Homeland Security''.

(b) REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS.—Section 208 of title 3, United States Code, is amended by striking ''Secretary of Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(c) POWERS, AUTHORITIES, AND DUTIES.—Section 3056 of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

**SEC. 904. COAST GUARD.**

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking ''of Transportation'', each place it appears, and inserting ''of Homeland Security''; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

**SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.**

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' after ''in coordination with''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

**SEC. 906. SELECT AGENT REGISTRATION.**

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting ''(as defined in subsection (l)(9))'' after ''Secretary'';

(2) in section 351A(h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services'';

(3) in section 351A(l), by inserting after paragraph (8) the following:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''; and

(4) in section 352A(i)—

(A) by striking ''(1)'' the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 907. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

**SEC. 908. MILITARY ACTIVITIES.**

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in war fighting, the military defense of the United States, or other traditional military activities.

## DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

**SEC. 1001. SHORT TITLE.**

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

**SEC. 1002. DEFINITIONS.**

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

**SEC. 1003. TRANSFER OF IMMIGRATION AND NATURALIZATION SERVICE FUNCTIONS.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto, to be restructured so as to separate enforcement and service functions.

## TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

### Subtitle A—Organization

**SEC. 1101. ABOLITION OF INS.**

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

**SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

### "CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

**"SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary for Immigration Services appointed under section 113.

''(3) The Assistant Secretary for Enforcement appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy and administration functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b), but does not include the functions described in paragraphs (7) and (8) of section 131(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' shall have the same meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears (other than the proviso in section 103(a)(1) of the Immigration and Nationality Act) and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security of the Department of Homeland Security, as appropriate, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary for Immigration Affairs and the Under Secretary for Border and Transportation Security, as appropriate.

**SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

**''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.**

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States with respect to any function within the jurisdiction of the Directorate. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(4) DEFINITION.—In this chapter, the term 'immigration policy and administration' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(i) by striking ''The Commissioner of Immigration and Naturalization'' and ''The Commissioner'' each place they appear and inserting ''The appropriate Under Secretary of the Department of Homeland Security''; and

(ii) except as provided in paragraph (1), by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''appropriate Under Secretary of the Department of Homeland Security''.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(C) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary for Immigration Affairs or the Under Secretary for Border and Transportation Security, as appropriate.

**SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

**''SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1105. BUREAU OF ENFORCEMENT.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

**''SEC. 114. BUREAU OF ENFORCEMENT.**

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary for Enforcement (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The detention function, except as specified in section 113(b)(2)(F).

''(B) The removal function.

''(C) The intelligence function.

''(D) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability

of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

**SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.**

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

**SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.**

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

**"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review.

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

**SEC. 1108. CLERICAL AMENDMENTS.**

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

**Subtitle B—Transition Provisions**

**SEC. 1111. TRANSFER OF FUNCTIONS.**

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—Except as provided in subsection (c) and title XIII, all functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—Except as provided in subsection (c), all functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

(c) SPECIAL RULE FOR BORDER PATROL AND INSPECTION FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the border patrol function, and primary and secondary immigration inspection functions, vested by statute in, or exercised by, the Attorney General, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Under Secretary for Border and Transportation in accordance with paragraphs (7) and (8) of section 131(b).

(2) REFERENCES.—With respect to the border patrol function and primary and secondary immigration inspection functions, references in this subtitle to—

(A) the Directorate shall be deemed to be references to the Directorate of Border and Transportation Security; and

(B) the Under Secretary shall be deemed to be references to the Under Secretary for Border and Transportation Security.

**SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.**

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the appropriate Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

**SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.**

The Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy and administration functions;

(B) immigration service functions;

(C) immigration enforcement functions (excluding the border patrol function and primary and secondary immigration inspection functions); and

(D) the border patrol function and primary and secondary immigration inspection functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

**SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.**

(a) DELEGATION TO THE DIRECTORATES.—The Secretary shall delegate—

(1) through the Under Secretary and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103)—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement; and

(2) the border patrol function and primary and secondary immigration inspection functions to the Under Secretary for Border and Transportation Security.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be made on a nonexclusive basis as the Secretary may determine may be necessary to ensure the faithful execution of the Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation Security, respectively, as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

**SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.**

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

**SEC. 1116. SAVINGS PROVISIONS.**

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

**SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.**

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

**SEC. 1118. OTHER AUTHORITIES NOT AFFECTED.**

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

**SEC. 1119. TRANSITION FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement (except for the border patrol function and primary and secondary immigration inspection functions);

(iii) the transfer to the Directorate of Border and Transportation Protection of the border patrol function and primary and secondary immigration inspection functions; and

(iv) the transfer of such other functions as are required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security, as appropriate, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

**Subtitle C—Miscellaneous Provisions**

**SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.**

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

**SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

**SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

**"SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.**

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

**Subtitle D—Effective Date**

**SEC. 1131. EFFECTIVE DATE.**

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

**TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION**

**SEC. 1201. UNACCOMPANIED ALIEN JUVENILES.**

(a) CUSTODY DETERMINATIONS.—

(1) IN GENERAL.—

(A) INITIAL CUSTODY AND CARE.—The custody and care of an unaccompanied alien juvenile shall be the responsibility of the Under Secretary of Immigration Affairs in the Department of Homeland Security or the Under Secretary of Border and Transportation Security, as determined under guidelines to be promulgated by the Secretary.

(B) TRANSFER OF CUSTODY AND CARE.—Unless the juvenile is described in subsection (b), the Department of Homeland Security shall transfer custody and care of that juvenile to the Office of Refugee Resettlement of the Department of Health and Human Services.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Directorate of Immigration Affairs shall retain or assume the custody and care of an unaccompanied alien juvenile—

(A) who has been charged with a felony;

(B) who has been convicted of a felony;

(C) who exhibits a violent or criminal behavior that endangers others; or

(D) with respect to whom the Secretary of Homeland Security has a substantial evidence to conclude that such juvenile endangers the national security of the United States.

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to subsection (a)(2), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the custody and care of unaccompanied alien juveniles who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such juvenile, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the juvenile are considered in decisions and actions relating to the custody and care of an unaccompanied alien juvenile;

(C) making placement determinations for all unaccompanied alien juveniles who are in Federal custody by reason of their immigration status;

(D) implementing placement determinations for such unaccompanied alien juveniles;

(E) implementing policies with respect to the care and placement of unaccompanied alien juveniles;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien juveniles;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien juveniles are housed;

(H) reuniting unaccompanied alien juveniles with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien juveniles;

(J) maintaining statistical information and other data on unaccompanied alien juveniles for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a juvenile's name, sex, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the juvenile came into Federal custody by reason of his or her immigration status;

(iii) information relating to the juvenile's placement, removal, or release from each facility in which the juvenile has resided;

(iv) in any case in which the juvenile is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the juvenile is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien juveniles; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien juveniles reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of Immigration Affairs of the Department of Homeland Security to ensure that the unaccompanied alien juveniles with respect to whom the placement determinations are made—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitative activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such juveniles upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to consider the use of the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien juveniles.

(c) APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN JUVENILES.—

(1) IN GENERAL.—An unaccompanied alien juvenile described in subsection (a)(2) may be placed in a facility appropriate for delinquent juveniles under conditions appropriate to the behavior of such juvenile.

(2) RESTRICTION ON DETENTION IN ADULT DETENTION FACILITIES.—To the maximum extent practicable, and consistent with the protection of the juvenile and others, an unaccompanied alien juvenile shall not be placed in an adult detention facility.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations or making enforcement determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State, as the case may be.

(e) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration and nationality laws of the United States with respect to the custody and care of unaccompanied alien juveniles that were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (i).

(f) OTHER TRANSITION MATTERS.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (i).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS.—The assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and

Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(h) DEFINITIONS.—In this section:

(1) LAWFULLY PRESENT IN THE UNITED STATES.—The term ''lawfully present in the United States'' means, with respect to an alien, an alien who is—

(A) an alien who is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) an alien who is a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act;

(C) an alien who is a special immigrant described in section 101(a)(27) of the Immigration and Nationality Act;

(D) an alien who is granted asylum under section 208 of that Act;

(E) a refugee who is admitted to the United States under section 207 of that Act;

(F) an alien who is paroled into the United States under section 212(d)(5) of that Act; or

(G) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect before April 1, 1997) or section 241(b)(3) of the Immigration and Nationality Act.

(2) PLACEMENT.—The term ''placement'' means the placement of an unaccompanied alien juvenile in either a detention facility or an alternative to such a facility.

(3) UNACCOMPANIED ALIEN JUVENILE.—The term ''unaccompanied alien juvenile'' means an alien who—

(A) is not lawfully present in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(i) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

## TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

### SEC. 1301. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1302.

### SEC. 1302. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

### SEC. 1303. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1302, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

## DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

## TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

### SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

### SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

**''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS**

''Sec.

''1401. Establishment of agency Chief Human Capital Officers.

''1402. Authority and functions of agency Chief Human Capital Officers.

**''§ 1401. Establishment of agency Chief Human Capital Officers**

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

**''§ 1402. Authority and functions of agency Chief Human Capital Officers**

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies, and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

**''14. Agency Chief Human Capital Officers ..... 1401''.**

### SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

### SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

**SEC. 2105. EFFECTIVE DATE.**

This title shall take effect 180 days after the date of enactment of this division.

## TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

**SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.**

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

**SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.**

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end of the following:

''(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

**''§ 3319. Alternative ranking and selection procedures**

''(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

**SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.**

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

**''§ 3521. Definitions**

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

**''§ 3522. Agency plans; approval**

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

**''§ 3523. Authority to provide voluntary separation incentive payments**

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c)if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

**''§ 3524. Effect of subsequent employment with the Government**

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to he agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

**''§ 3525. Regulations**

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

**''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'';**

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.

''3522. Agency plans; approval.

''3523. Authority to provide voluntary separation incentive payments.

''3524. Effect of subsequent employment with the Government.

''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors.''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

**SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

## TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

**SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.**

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

**SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.**

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

## TITLE XXIV—ACADEMIC TRAINING

**SEC. 2401. ACADEMIC TRAINING.**

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

**''§ 4107. Academic degree training**

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

**SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.**

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and''.

**SEC. 2403. COMPENSATION TIME OFF FOR TRAVEL.**

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

**''§ 5550b. Compensatory time off for travel**

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

**SEC. 2404. EXTENSION OF CUSTOMS USER FEES.**

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''December 31, 2007.''.

## TITLE XXXI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

**SEC. 3101. ESTABLISHMENT OF COMMISSION.**

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

**SEC. 3102. PURPOSES.**

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of

September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

**SEC. 3103. COMPOSITION OF THE COMMISSION.**

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

**SEC. 3104. FUNCTIONS OF THE COMMISSION.**

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

**SEC. 3105. POWERS OF THE COMMISSION.**

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the vice chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

**SEC. 3106. STAFF OF THE COMMISSION.**

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who

are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 3107. COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 3108. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.**

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

**SEC. 3109. REPORTS OF THE COMMISSION; TERMINATION.**

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

**SEC. 3110. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

**TITLE XXXII**

**SEC. . PRESERVATION OF THE PRESIDENTIAL NATIONAL SECURITY POWER.**

''Notwithstanding any other provision in this Act, nothing in this Act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and considerations as existed on the day of the terrorist attacks on September 11, 2001.''

These provisions shall take effect two days after the date of enactment.

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**SA 4745.** Mr. DASCHLE submitted an amendment intended to be proposed to amendment SA 4744 submitted by Mr. DASCHLE and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 96, strike line 2 and all that follows through page 109, line 13, and insert the following:

**SEC. 730 ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

**"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY**

''Sec.
''9701. Establishment of human resources management system.

**"§ 9701. Establishment of human resources management system**

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 71, 72, 73, 77, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

**''97. Department of Homeland Security ..... 9701''.**

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

**SEC. ____. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of title 5, United States Code, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(d) SAVINGS CLAUSE.—Notwithstanding any other provision of this Act, Title XXXII is null and void.

These provisions shall take effect one day after enactment.

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**SA 4746.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 232, strike lines 2 through 10 and insert the following:

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act as may be necessary to carry out the authorities and functions of immigration judges, appellate immigration judges, and the chief administrative hearing officer under this Act through the Executive Office of Immigration Review of the Department of Justice.

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**SA 4747.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 55, lines 11 and 12, strike '', including the establishment of rules,''.

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**SA 4748.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 55, line 16, before the semicolon insert the following: '', except that this paragraph shall be restricted to functions transferred by this Act to the Directorate for Border and Transportation Security''.

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**SA 4749.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 1103 of the amendment, add the following:

(c) INSPECTIONS.—The Under Secretary of Immigration Affairs shall assign officers, with expertise and training in immigration and nationality law, to major ports of entry in the United States to assist in the inspection of aliens. For other ports of entry, the Under Secretary shall take steps to ensure such officers participate in the inspections process.

(d) TRAINING FOR BORDER PATROL AND INSPECTORS.—The Under Secretary of Immigration Affairs, in consultation with the Under Secretary of Border and Transportation Protection, will provide training in immigration and nationality law to personnel performing the border patrol and inspections functions in the Border and Transportation Protection Directorate.

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**SA 4750.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike title XIII and insert the following:

**TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**SEC. 1301. ESTABLISHMENT.**

(a) IN GENERAL.—There is within the Department of Justice the Executive Office for Immigration Review.

(b) STATUTORY CONSTRUCTION.—Nothing in title XI, or any amendment made by that title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by, the Executive Office for Immigration Review of the Department of Justice, or any officer, employee, or component thereof, immediately prior to the effective date of title XI.

**SEC. 1302. DIRECTOR OF THE AGENCY.**

(a) APPOINTMENT.—There shall be at the head of the Executive Office for Immigration Review a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Executive Office for Immigration Review and be responsible for the promulgation of rules and regulations affecting the agency; and

(2) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

**SEC. 1303. BOARD OF IMMIGRATION APPEALS.**

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Executive Office for Immigration Review. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Attorney General, in consultation with the Director and the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of pertinent legal expertise.

(d) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(e) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

(f) REFERRAL OF CASES TO THE ATTORNEY GENERAL.—

(1) IN GENERAL.—The Board shall refer to the Attorney General for review of any case that—

(A) the Attorney General directs the Board to refer to the Attorney General;

(B) the Chairman or a majority of the Board believes should be referred to the Attorney General for review; or

(C) the Under Secretary of Homeland Security for Immigration Affairs requests be referred to the Attorney General for review.

(2) DECISION OF THE ATTORNEY GENERAL.—In any case in which the Attorney General reviews the decision of the Board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided by regulations.

**SEC. 1304. CHIEF IMMIGRATION JUDGE.**

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Executive Office for Immigration Review the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Attorney General, in consultation with the Director and the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of pertinent legal expertise.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

**SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.**

(a) ESTABLISHMENT OF POSITION.—There shall be within the Executive Office for Immigration Review the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

**SEC. 1306. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Executive Office for Immigration Review such sums as may be necessary to carry out this title.

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**SA 4751.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 232, line 10, before the period insert the following: '', except that the Attorney General may not exercise the authorities and functions in this paragraph in a manner that does not respect the independence of immigration judges''.

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**SA 4752.** Mr. HOLLINGS (for Mr. GRAHAM) proposed an amendment to the bill S. 2506, to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 2003''.

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

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.
Sec. 102. Classified schedule of authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Incorporation of reporting requirements.
Sec. 106. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

Sec. 301. Increase in employee compensation and benefits authorized by law.
Sec. 302. Restriction on conduct of intelligence activities.
Sec. 303. Definition of congressional intelligence committees in National Security Act of 1947.
Sec. 304. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.
Sec. 305. Modification of authority to make funds for intelligence activities available for other intelligence activities.
Sec. 306. Clarification of authority to furnish information on intelligence activities to Congress.
Sec. 307. Standardized transliteration of names into the Roman alphabet.
Sec. 308. Standards and qualifications for the performance of intelligence activities.
Sec. 309. Modification of David L. Boren National Security Education Program.
Sec. 310. Scholarships and work-study for pursuit of graduate degrees in science and technology.
Sec. 311. National Virtual Translation Center.
Sec. 312. Foreign Terrorist Asset Tracking Center.
Sec. 313. Terrorist Identification Classification System.
Sec. 314. Annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets.

Sec. 315. Two-year extension of Central Intelligence Agency Voluntary Separation Pay Act.
Sec. 316. Additional one-year suspension of reorganization of Diplomatic Telecommunications Service Program Office.

TITLE IV—REPORTING REQUIREMENTS

Subtitle A—Submittal of Reports to Intelligence Committees

Sec. 401. Dates for submittal of various annual and semi-annual reports to the congressional intelligence committees.

Subtitle B—Recurring Annual Reports

Sec. 411. Annual assessment of satisfaction of intelligence community with collection, analysis, and production of intelligence.
Sec. 412. Annual report on threat of attack on the United States using weapons of mass destruction.
Sec. 413. Annual report on covert leases.
Sec. 414. Annual report on improvement of financial statements of certain elements of the intelligence community for auditing purposes.
Sec. 415. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.
Sec. 416. Annual reports of inspectors general of the intelligence community on proposed resources and activities of their offices.
Sec. 417. Annual report on counterdrug intelligence matters.

Subtitle C—Other Reports

Sec. 431. Report on effect of country-release restrictions on allied intelligence-sharing relationships.
Sec. 432. Evaluation of policies and procedures of Department of State on protection of classified information at department headquarters.
Sec. 433. Study of Department of State Consular Services.

Subtitle D—Repeal of Certain Report Requirements

Sec. 441. Repeal of certain report requirements.

TITLE V—COUNTERINTELLIGENCE ACTIVITIES

Sec. 501. Short title; purpose.
Sec. 502. National Counterintelligence Executive.
Sec. 503. National Counterintelligence Policy Board.
Sec. 504. Office of the National Counterintelligence Executive.

TITLE VI—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

Sec. 601. Findings.
Sec. 602. National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.
Sec. 603. Powers of Commission.
Sec. 604. Staff of Commission.
Sec. 605. Compensation and travel expenses.
Sec. 606. Treatment of information relating to national security.
Sec. 607. Final report; termination.
Sec. 608. Assessments of final report.
Sec. 609. Inapplicability of certain administrative provisions.
Sec. 610. Funding.
Sec. 611. Definitions.

## TITLE I—INTELLIGENCE ACTIVITIES

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2003 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The National Reconnaissance Office.
(11) The National Imagery and Mapping Agency.
(12) The Coast Guard.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2003, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill _____ of the One Hundred Seventh Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, to Members of Congress who so request, and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2003 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall notify promptly the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

**SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 2003 the sum of $157,979,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2004.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 309 full-time personnel as of September 30, 2003. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2003 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2004.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2003, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2003 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), $32,100,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2004, and funds provided for procurement purposes shall remain available until September 30, 2005.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. INCORPORATION OF REPORTING REQUIREMENTS.**

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill _____ of the One Hundred Seventh Congress, in the classified annex to this Act, in the report of the Senate to accompany the bill S.___ of the 107th Congress, or in the report of the House of Representatives to accompany the bill H.R.___ is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) SUBMITTAL DATE.—The date for the submittal to the congressional intelligence committees of any report referred to in subsection (a), whether an annual report, semi-annual report, or non-recurring report, shall be as provided for a report of that type in section 507 of the National Security Act of 1947, as added by section 401 of this Act.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term

''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 106. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.**

(a) CONSULTATION IN PREPARATION.—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations or a classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

## TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

**SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2003 the sum of $223,300,000.

## TITLE III—GENERAL PROVISIONS

**SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

**SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

**SEC. 303. DEFINITION OF CONGRESSIONAL INTELLIGENCE COMMITTEES IN NATIONAL SECURITY ACT OF 1947.**

(a) IN GENERAL.—Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by adding at the end the following new paragraph:

''(7) The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.''.

(b) CONFORMING AMENDMENTS.—(1) That Act is further amended by striking ''Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives'' and inserting ''congressional intelligence committees'' in each of the following provisions:

(A) Section 104(d)(4) (50 U.S.C. 403–4(d)(4)).

(B) Section 603(a) (50 U.S.C. 423(a)).

(2) That Act is further amended by striking ''Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate'' and inserting ''congressional intelligence committees'' in each of the following provisions:

(A) Section 113(c) (50 U.S.C. 404h(c)).

(B) Section 301(j) (50 U.S.C. 409a(j)).

(C) Section 801(b)(2) (50 U.S.C. 435(b)(2)).

(D) Section 903 (50 U.S.C. 441b).

(3) That Act is further amended by striking ''intelligence committees'' and inserting ''congressional intelligence committees'' in each of the following provisions:

(A) Section 501 (50 U.S.C. 413).

(B) Section 502 (50 U.S.C. 413a).

(C) Section 503 (50 U.S.C. 413b).

(D) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(4) Section 104(d)(5) of that Act (50 U.S.C. 403–4(d)(5)) is amended by striking ''Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives'' and inserting ''congressional intelligence committees''.

(5) Section 105C(a)(3)(C) of that Act (50 U.S.C. 403–5c(a)(3)(C)) is amended—

(A) by striking clauses (i) and (ii) and inserting the following new clause (i):

''(i) The congressional intelligence committees.''; and

(B) by redesignating clauses (iii), (iv), (v), and (vi) as clauses (ii), (iii), (iv), and (v), respectively.

(6) Section 114 of that Act (50 U.S.C. 404i) is amended by striking subsection (c) and inserting the following new subsection (c):

''(c) CONGRESSIONAL LEADERSHIP DEFINED.—In this section, the term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.''.

(7) Section 501(a) of that Act (50 U.S.C. 413(a)), as amended by paragraph (3) of this subsection, is further amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

(8) Section 503(c)(4) of that Act (50 U.S.C. 413b(c)(4)) is amended by striking ''intelligence committee'' and inserting ''congressional intelligence committee''.

(9) Section 602(c) of that Act (50 U.S.C. 422(c)) is amended by striking ''the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives'' and inserting ''either congressional intelligence committee''.

(10) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking ''intelligence committees of Congress'' and inserting ''congressional intelligence committees''.

**SEC. 304. SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE.**

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by adding at the end the following new section:

''SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE

''SEC. 506. (a) IN GENERAL.—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the National Foreign Intelligence Program for each of the following:

''(1) Counterterrorism.

''(2) Counterproliferation.

''(3) Counternarcotics.

''(4) Counterintelligence.

''(b) ELECTION OF CLASSIFIED OR UNCLASSIFIED FORM.—Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.''.

(b) CLERICAL AMENDMENT.—The table of sections for that Act is amended by inserting after the item relating to section 505 the following new item:

''Sec. 506. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.''.

**SEC. 305. MODIFICATION OF AUTHORITY TO MAKE FUNDS FOR INTELLIGENCE ACTIVITIES AVAILABLE FOR OTHER INTELLIGENCE ACTIVITIES.**

(a) NATURE OF UNFORSEEN REQUIREMENTS.—Section 504(a) of the National Security Act of 1947 (50 U.S.C. 414(a)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) in subparagraph (C), as so redesignated—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

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

(3) by inserting ''(1)'' after ''(a)'';

(4) by striking ''(4) nothing'' and inserting ''(2) Nothing'';

(5) by indenting paragraph (2), as designated by paragraph (4) of this section, two ems from the left margin; and

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

''(3) For purposes of paragraph (1)(C)(ii), an unforseen requirement may not include a requirement arising under statute or the request of a committee or Member of Congress.''.

(b) CERTIFICATION REQUIREMENT FOR REPROGRAMMING.—Paragraph (1)(C)(iii) of that section, as redesignated by subsection (a) of this section, is further amended by striking ''has notified'' and all that follows and inserting ''submits to the appropriate congressional committees, before obligation of funds for such activity, a certification that the requirements of clauses (i) and (ii) are met with respect to such activity.''.

**SEC. 306. CLARIFICATION OF AUTHORITY TO FURNISH INFORMATION ON INTELLIGENCE ACTIVITIES TO CONGRESS.**

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 503 the following new section:

''AUTHORITY TO FURNISH INFORMATION ON INTELLIGENCE ACTIVITIES TO CONGRESS

''SEC. 503A. Notwithstanding any other provision of law, and consistent with the obligations of the Director of Central Intelligence to protect intelligence sources and methods, it shall not be unlawful for the Director, or a designee of the Director, to furnish to the congressional intelligence committees information in the possession of an element of the intelligence community on intelligence activities in furtherance of the reporting responsibilities of such element under sections 501, 502, and 503 or any other

provision of law requiring the reporting of information on intelligence activities to Congress.''.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 503 the following new item:

''Sec. 503A. Authority to furnish information on intelligence activities to Congress.''.

**SEC. 307. STANDARDIZED TRANSLITERATION OF NAMES INTO THE ROMAN ALPHABET.**

(a) METHOD OF TRANSLITERATION REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Director of Central Intelligence shall establish a standardized method for transliterating into the Roman alphabet personal and place names originally rendered in any language that uses an alphabet other than the Roman alphabet.

(b) USE BY INTELLIGENCE COMMUNITY.—The Director shall ensure the use of the method established under subsection (a) in—

(1) all communications among the elements of the intelligence community; and

(2) all intelligence products of the intelligence community.

**SEC. 308. STANDARDS AND QUALIFICATIONS FOR THE PERFORMANCE OF INTELLIGENCE ACTIVITIES.**

Section 104 of the National Security Act of 1947 (50 U.S.C. 403–4) is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

''(g) STANDARDS AND QUALIFICATIONS FOR PERFORMANCE OF INTELLIGENCE ACTIVITIES.—The Director, acting as the head of the intelligence community, shall, in consultation with the heads of effected agencies, prescribe standards and qualifications for persons engaged in the performance of intelligence activities within the intelligence community.''.

**SEC. 309. MODIFICATION OF DAVID L. BOREN NATIONAL SECURITY EDUCATION PROGRAM.**

(a) TERMINATION OF SCHOLARSHIP PROGRAM.—Paragraph (1) of subsection (a) of section 802 of the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1902) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraph (B) as subparagraph (A).

(b) SUBSTITUTION OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE FOR GRANT PROGRAM.—That subsection is further amended—

(1) in paragraph (1), by striking subparagraph (C) and inserting the following new subparagraph (B):

''(B) carrying out activities under paragraph (2) relating to proficiency in foreign languages.'';

(2) by striking paragraph (2);

(3) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(4) by inserting after paragraph (1) the following new paragraph (2):

''(2) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—

''(A) IN GENERAL.—As part of the program under paragraph (1), the Secretary shall, in accordance with regulations prescribed by the Secretary, carry out activities at institutions of higher education, which activities shall be designed—

''(i) to produce in professionals an advanced level of proficiency in foreign languages that the Board identifies under section 803(d)(4) as critical to the national security of the United States; and

''(ii) to permit undergraduate and graduate students, and employees of the United States Government, to undertake studies to enhance their foreign language proficiency.

''(B) PARTICIPATION BY FELLOWSHIP RECIPIENTS.—Recipients of fellowships under paragraph (1)(A) may participate in the activities carried out under this paragraph.

''(C) DESIGNATION OF ACTIVITIES.—The activities carried out under this paragraph shall be known as the 'National Flagship Language Initiative'.''.

(c) FUNDING ALLOCATION.—That subsection is further amended by inserting after paragraph (2), as amended by subsection (b) of this section, the following new paragraph (3):

''(3) FUNDING ALLOCATIONS.—Of the amount available for obligation out of the Fund for any fiscal year, the Secretary shall allocate such amount in a manner considered appropriate by the Secretary for purposes of fellowships under paragraph (1)(A) and carrying out activities under paragraph (1)(B).''.

(d) CONFORMING AMENDMENTS.—(1) Section 802 of that Act is further amended—

(A) in subsection (a)(5), as redesignated by subsection (b)(3) of this section, by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships, and the carrying out of activities,'';

(B) in subsection (b)—

(i) in the matter preceding paragraph (1)—

(I) by striking ''scholarship or''; and

(II) by striking ''or any scholarship''; and

(ii) by striking paragraph (2) and inserting the following new paragraph (2):

''(2) shall, upon completion of such recipient's education under the program, and in accordance with such regulations—

''(A) work in a national security position for a period specified by the Secretary, which period shall be not less than the period for which the fellowship assistance was provided; or

''(B) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in the field of higher education in a discipline relating to the foreign country, foreign language, area study, counterproliferation study, or international field of study for which the fellowship was awarded for a period specified by the Secretary, which period shall be established in accordance with subparagraph (A); and'';

(C) in subsection (c)—

(i) by striking ''scholarship or'' each place it appears; and

(ii) by striking ''scholarships and'';

(D) in subsection (d)—

(i) by striking ''scholarships, fellowships, or grants'' and inserting ''fellowships, or for the carrying out of activities,''; and

(ii) by striking ''scholarships, fellowships, or grants (as the case may be)'' and inserting ''such fellowships or activities, as the case may be,'';

(E) in subsection (e), by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships, and carry out activities,'';

(F) in subsection (f), by striking ''grant, scholarship, or''; and

(G) in subsection (g)(1), by striking ''or scholarship''.

(2) Section 803(d) of that Act (50 U.S.C. 1903(d)) is amended—

(A) in paragraph (1), by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships, and carrying out activities,'';

(B) in paragraph (3)—

(i) by striking ''desiring scholarships or fellowships, and institutions of higher education desiring grants under this chapter'' and inserting ''desiring fellowships under section 802(a)(1), and institutions of higher education desiring to carry out activities under section 802(a)(2)''; and

(ii) by striking ''scholarship or'' each place it appears;

(C) in paragraph (4)—

(i) by striking subparagraphs (A) and (C);

(ii) by redesignating subparagraphs (B) and (D) as subparagraphs (A) and (C), respectively;

(iii) in subparagraph (A), as so redesignated, by striking ''section 802(a)(1)(B)'' and inserting ''section 802(a)(1)(A)'';

(iv) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) which foreign languages are critical to the national security interests of the United States for purposes of section 802(a)(2); and''; and

(v) in subparagraph (C), as so redesignated, by striking ''scholarships or'';

(D) in paragraph (6), by striking ''scholarship recipients and''; and

(E) in paragraph (7), by striking ''scholarship or''.

(3) Section 804(b)(1) of that Act (50 U.S.C. 1904(b)(1)) is amended by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships and carrying out activities''.

(4) The heading for title VIII of the Intelligence Authorization Act, Fiscal Year 1992 (Public Law 102–183) is amended to read as follows:

**''TITLE VIII—NATIONAL SECURITY FELLOWSHIPS AND OTHER EDUCATIONAL SUPPORT''.**

(5) The heading of section 802 of that Act is amended to read as follows:

**''SEC. 802. PROGRAM OF FELLOWSHIPS AND OTHER EDUCATIONAL SUPPORT.''.**

(e) CONSTRUCTION OF AMENDMENTS.—Nothing in the amendments to the David L. Boren National Security Education Act of 1991 made by this section shall affect the validity of any scholarship, fellowship, or grant made or awarded under that Act before the date of the enactment of this Act.

(f) REPORT ON CONVERSION OF FUNDING FROM TRUST FUND TO ANNUAL APPROPRIATIONS.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall, in conjunction with the Director of Central Intelligence, submit to the congressional intelligence committees a report on the advisability of converting the funding of the program of fellowships and other educational support under the David L. Boren National Security Education Act of 1991, as amended by this section, from funding through the National Security Education Trust Fund under section 804 of that Act to funding through appropriations.

(2) If the Secretary and the Director determine in the report under paragraph (1) that the conversion of funding referred to in that paragraph is advisable, the report shall include a recommendation for such legislation as the Secretary and the Director consider appropriate to implement the conversion of funding.

(g) REPORT ON MODIFICATION OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE BEFORE IMPLEMENTATION.—If the Secretary, in conjunction with the Director, proposes any modification of the National Flagship Language Initiative under paragraph (2) of section 802(a) of the David L. Boren National Security Education Act of 1991, as amended by subsection (c) of this section, between the date of the enactment of this Act and the date of the implementation of the initiative, the Secretary and the Director shall jointly submit to the congressional intelligence committees a report on the proposed modification.

(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 310. SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY.**

(a) PROGRAM REQUIRED.—The National Security Act of 1947 is amended—

(1) by redesignating title X as title XI;

(2) by redesignating section 1001 as section 1101; and

(3) by inserting after title IX the following new title X:

''TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

''SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY

''SEC. 1001. (a) PROGRAM REQUIRED.—The Director of Central Intelligence shall carry out a program to provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

''(b) ADMINISTRATION.—The Director shall administer the program through the Assistant Director of Central Intelligence for Administration.

''(c) IDENTIFICATION OF FIELDS OF STUDY.—The Director shall identify fields of study under subsection (a) in consultation with the other heads of the elements of the intelligence community.

''(d) ELIGIBILITY FOR PARTICIPATION.—An individual eligible to participate in the program is any individual who—

''(1) either—

''(A) is an employee of the intelligence community; or

''(B) meets criteria for eligibility for employment in the intelligence community that are established by the Director;

''(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a); and

''(3) is eligible for a security clearance at the level of Secret or above.

''(e) REGULATIONS.—The Director shall prescribe regulations for purposes of the administration of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by striking the items relating to title X and section 1001 and inserting the following new items:

''TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

''Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

''TITLE XI—OTHER PROVISIONS

''Sec. 1101. Applicability to United States intelligence activities of Federal laws implementing international treaties and agreements.''.

**SEC. 311. NATIONAL VIRTUAL TRANSLATION CENTER.**

(a) ESTABLISHMENT.—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the intelligence community an element with the function of connecting the elements of the intelligence community engaged in the acquisition, storage, translation, or analysis of voice or data in digital form.

(b) DESIGNATION.—The element established under subsection (a) shall be known as the National Virtual Translation Center.

(c) ADMINISTRATIVE MATTERS.—(1) The Director shall retain direct supervision and control over the element established under subsection (a).

(2) The element established under subsection (a) shall connect elements of the intelligence community utilizing the most current available information technology that is applicable to the function of the element.

(d) DEADLINE FOR ESTABLISHMENT.—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

**SEC. 312. FOREIGN TERRORIST ASSET TRACKING CENTER.**

(a) ESTABLISHMENT.—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency an element responsible for conducting all-source intelligence analysis of information relating to the financial capabilities, practices, and activities of individuals, groups, and nations associated with international terrorism in their activities relating to international terrorism.

(b) DESIGNATION.—The element established under subsection (a) shall be known as the Foreign Terrorist Asset Tracking Center.

(c) DEADLINE FOR ESTABLISHMENT.—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

**SEC. 313. TERRORIST IDENTIFICATION CLASSIFICATION SYSTEM.**

(a) REQUIREMENT.—(1) The Director of Central Intelligence, acting as head of the Intelligence Community, shall—

(A) establish and maintain a list of individuals who are known or suspected international terrorists, and of organizations that are known or suspected international terrorist organizations; and

(B) ensure that pertinent information on the list is shared with the departments, agencies, and organizations described by subsection (c).

(2) The list under paragraph (1), and the mechanisms for sharing information on the list, shall be known as the ''Terrorist Identification Classification System''.

(b) ADMINISTRATION.—(1) The Director shall prescribe requirements for the inclusion of an individual or organization on the list required by subsection (a), and for the deletion or omission from the list of an individual or organization currently on the list.

(2) The Director shall ensure that the information utilized to determine the inclusion, or deletion or omission, of an individual or organization on or from the list is derived from all-source intelligence.

(3) The Director shall ensure that the list is maintained in accordance with existing law and regulations governing the collection, storage, and dissemination of intelligence concerning United States persons.

(c) INFORMATION SHARING.—Subject to section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6)), relating to the protection of intelligence sources and methods, the Director shall provide for the sharing of the list, and information on the list, with such departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations as the Director considers appropriate.

(d) REPORTING AND CERTIFICATION.—(1) The Director shall review on an annual basis the information provided by various departments and agencies for purposes of the list under subsection (a) in order to determine whether or not the information so provided is derived from the widest possible range of intelligence available to such departments and agencies.

(2) The Director shall, as a result of each review under paragraph (1), certify whether or not the elements of the intelligence community responsible for the collection of intelligence related to the list have provided information for purposes of the list that is derived from the widest possible range of intelligence available to such department and agencies.

(e) REPORT ON CRITERIA FOR INFORMATION SHARING.—(1) Not later then March 1, 2003, the Director shall submit to the congressional intelligence committees a report describing the criteria used to determine which types of information on the list required by subsection (a) are to be shared, and which types of information are not to be shared, with various departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations.

(2) The report shall include a description of the circumstances in which the Director has determined that sharing information on the list with the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c) would be inappropriate due to the concerns addressed by section 103(c)(6) of the National Security Act of 1947, relating to the protection of sources and methods, and any instance in which the sharing on information on the list has been inappropriate in light of such concerns.

(f) SYSTEM ADMINISTRATION REQUIREMENTS.—(1) The Director shall, to the maximum extent practicable, ensure the interoperability of the Terrorist Identification Classification System with relevant information systems of the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c).

(2) The Director shall ensure that the System utilizes technologies that are effective in aiding the identification of individuals in the field.

(g) REPORT ON STATUS OF SYSTEM.—(1) Not later than one year after the date of the enactment of this Act, the Director shall, in consultation with the Director of Homeland Security, submit to the congressional intelligence committees a report on the status of the Terrorist Identification Classification System. The report shall contain a certification on the following:

(A) Whether or not the System contains the intelligence information necessary to facilitate the contribution of the System to the domestic security of the United States.

(B) Whether or not the departments and agencies having access to the System have access in a manner that permits such departments and agencies to carry out appropriately their domestic security responsibilities.

(C) Whether or not the System is operating in a manner that maximizes its contribution to the domestic security of the United States.

(D) If a certification under subparagraph (A), (B), or (C) is in the negative, the modifications or enhancements of the System necessary to ensure a future certification in the positive.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 314. ANNUAL REPORT ON FOREIGN COMPANIES INVOLVED IN THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION THAT RAISE FUNDS IN THE UNITED STATES CAPITAL MARKETS.**

(a) ANNUAL REPORT REQUIRED.—The Director of Central Intelligence shall submit to

the appropriate committees of Congress on an annual basis a report setting forth each foreign company described in subsection (b) that raised or attempted to raise funds in the United States capital markets during the preceding year.

(b) COVERED FOREIGN COMPANIES.—A foreign company described in this subsection is any foreign company determined by the Director to be engaged or involved in the proliferation of weapons of mass destruction (including nuclear, biological, or chemical weapons) or the means to deliver such weapons.

(c) SUBMITTAL DATES.—(1) In the case of the appropriate committees of Congress referred to in paragraph (1) of subsection (e), the date each year for the submittal of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 401 of this Act.

(2) In the case of the appropriate committees of Congress referred to in paragraphs (2) and (3) of subsection (e), the date each year for the submittal of the report required by subsection (a) shall be February 1 of such year.

(d) FORM OF REPORTS.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

(2) the Committees on Armed Services, Banking, Housing, and Urban Affairs, and Governmental Affairs of the Senate; and

(3) the Committees on Armed Services, Financial Services, and Government Reform of the House of Representatives.

**SEC. 315. TWO-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT.**

Section 2(i) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

(1) in subsection (f), by striking ''September 30, 2003'' and inserting ''September 30, 2005''; and

(2) in subsection (i), by striking ''in fiscal year 1998, 1999, 2000, 2001, 2002, or 2003'' and inserting ''in fiscal years 1998 through 2005''.

**SEC. 316. ADDITIONAL ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.**

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 115 Stat. 1401; 22 U.S.C. 7301 note) is amended by striking ''October 1, 2002'' and inserting ''October 1, 2003''.

## TITLE IV—REPORTING REQUIREMENTS

### Subtitle A—Submittal of Reports to Intelligence Committees

**SEC. 401. DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES.**

(a) IN GENERAL.—(1) Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 304 of this Act, is further amended by adding at the end the following new section:

''DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES

''SEC. 507. (a) ANNUAL REPORTS.—The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1):

''(1) The annual report on the assessment of the satisfaction of the intelligence community with the collection, analysis, and production of intelligence required by section 102(i).

''(2) The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 105(d).

''(3) The annual report on intelligence required by section 109.

''(4) The annual report on the detail of intelligence community personnel required by section 113.

''(5) The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 114(a)(2).

''(6) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 114(b).

''(7) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 114(c).

''(8) The annual report on covert leases required by section 114(d).

''(9) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 114A.

''(10) The annual report on the protection of the identities of covert agents required by section 603.

''(11) The annual report on transfers of amounts for acquisition of land by the Central Intelligence Agency required by section 5(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(c)(2)).

''(12) The annual audit of the Central Intelligence Agency central services program required by section 21(g) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(g)).

''(13) The annual report on the use of National Security Agency personnel as special policemen required by section 11(a)(5) of the National Security Agency Act of 1959 (50 U.S.C. 402 note).

''(14) The annual report of the Inspectors Generals of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

''(15) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10, United States Code.

''(16) The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10, United States Code.

''(17) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540C(c)(2) of title 28, United States Code.

''(18) The annual update on foreign industrial espionage required by section 809(b) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. App. 2170b(b)).

''(19) The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 811(c)(6) of the Counterintelligence and Security Enhancements Act of 1994 (50 U.S.C. 402a(c)(6)).

''(20) The annual report on intelligence activities of the People's Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 50 U.S.C. 402a note).

''(21) The annual report on enhancing protection of national security at the Department of Justice required by section 606(b)(2)(B) of the Counterintelligence Reform Act of 2000 (title VI of Public Law 106–567).

''(22) The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets required by section 314 of the Intelligence Authorization Act for Fiscal Year 2003.

''(23) The annual report on counterdrug intelligence matters required by section 417 of the Intelligence Authorization Act for Fiscal Year 2003.

''(24) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 1012(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291–4(c)(2)).

''(25) The annual report on exceptions to consumer disclosure requirements for national security investigations under section 604(b)(4)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)(E)).

''(26) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

''(b) SEMI-ANNUAL REPORTS.—The dates for the submittal to the congressional intelligence committees of the following semi-annual reports shall be the dates each year provided in subsection (c)(2):

''(1) The periodic reports on intelligence provided to the United Nations required by section 112(b)(3).

''(2) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)).

''(3) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (5 U.S.C. App.) as required by section 13(b) of that Act.

''(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced chemical munitions required by section 721(b) of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104–293; 50 U.S.C. 2366(b)).

''(5) The semiannual reports on the activities of the Diplomatic Telecommunications Service Program Office (DTS–PO) required by section 322(a)(6)(D)(ii) of the Intelligence Authorization Act for Fiscal Year 2001 (22 U.S.C. 7302(a)(6)(D)(ii)).

''(6) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 624(h)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)(2)).

''(7) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)).

''(c) SUBMITTAL DATES FOR REPORTS.—(1) Except as provided in subsection (d), each annual report listed in subsection (a) shall be submitted not later than February 1.

''(2) Except as provided in subsection (d), each semi-annual report listed in subsection (b) shall be submitted not later than February 1 and August 1.

''(d) POSTPONEMENT OF SUBMITTAL.—(1) Subject to paragraph (3), the date for the submittal of an annual report listed in subsection (a) may be postponed until March 1, or the date of the submittal of a semiannual report listed in subsection (b) may be postponed until March 1 or September 1, as the case may be, if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

''(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the

date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

''(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

''(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such paragraph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

''(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.

''(e) CONSTRUCTION.—The provisions of this section shall not affect the date for the submittal of any report covered by this section to a Member or committee of Congress other than the congressional intelligence committees, or to an official of the Executive branch.''.

(2) The table of sections for the National Security Act of 1947, as amended by section 304 of this Act, is further amended by inserting after the item relating to section 506 the following new item:

''Sec. 507. Dates for submittal of various annual and semi-annual reports to the congressional intelligence committees.''.

(b) REPORT OF GENERAL COUNSEL OF CIA ON EFFORTS TO ENSURE COMPLIANCE WITH REPORTING DEADLINES.—(1) Not later than December 1, 2002, the General Counsel of the Central Intelligence Agency shall submit to the congressional intelligence committees a report on the efforts of the Office of the General Counsel of the Central Intelligence Agency to ensure compliance by the elements of the intelligence community with the requirements of section 507 of the National Security Act of 1947, as added by subsection (a).

(c) CONFORMING AMENDMENTS TO EXISTING REPORTING REQUIREMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—(A) Subsection (d) of section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended to read as follows:

''(d) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF CERTAIN ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the evaluation described in paragraph (3).

''(2) The Director shall submit each year to the Committee on Foreign Intelligence of the National Security Council, and to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, the evaluation described in paragraph (3).

''(3) An evaluation described in this paragraph is an evaluation of the performance and responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their respective national missions.

''(4) The Director shall submit each evaluation under this subsection in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.''.

(B) Section 109 of that Act (50 U.S.C. 404d) is amended—

(i) in subsection (a), by striking paragraph (1) and inserting the following new paragraph (1):

''(1)(A) Not later each year than the date provided in section 507, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

''(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31, United States Code, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).'';

(ii) in subsection (c), as amended by section 803(a) of the Intelligence Renewal and Reform Act of 1996 (title VIII of Public Law 104–293; 110 Stat. 3475)—

(I) in paragraph (1), by striking ''The Select Committee on Intelligence of the Senate, the Committee on Appropriations,'' and inserting ''The Committee on Appropriations''; and

(II) in paragraph (2), by striking ''The Permanent Select Committee on Intelligence of the Senate, the Committee on Appropriations,'' and inserting ''The Committee on Appropriations''; and

(iii) by striking subsection (c), as added by section 304(a) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103–178; 107 Stat. 2034).

(C) Section 112(b) of that Act (50 U.S.C. 404g(b)) is amended by adding at the end the following new paragraph:

''(3) In the case of periodic reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.''.

(D) Section 113(c) of that Act (50 U.S.C. 404h(c)) is amended by striking ''Not later than'' and all that follows through ''a report'' and inserting ''Not later each year than the date provided in section 507, the Director of Central Intelligence shall submit to the congressional intelligence committees an annual report''.

(E) Section 114 of that Act (50 U.S.C. 404i) is amended—

(i) in subsection (a)—

(I) in paragraph (1), by striking ''the congressional intelligence committees and'';

(II) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(III) by inserting after paragraph (1) the following new paragraph (2):

''(2) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the report required to be submitted under paragraph (1) during the preceding year.'';

and

(ii) in subsection (b)(1), by striking '', on an annual basis'' and all that follows through ''leadership'' and inserting ''submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 507,''.

(F) Section 603 of that Act (50 U.S.C. 423) is amended—

(i) in subsection (a), by adding at the end the following new sentence: ''The date for the submittal of the report shall be the date provided in section 507.''; and

(ii) in subsection (b), by striking the second sentence.

(2) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(A) Section 5(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(c)(2)) is amended—

(i) by striking ''The Director'' and all that follows through ''an annual'' and inserting ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a''; and

(ii) by inserting ''during the preceding year'' after ''paragraph (1)''.

(B) Section 17(d)(1) of that Act (50 U.S.C. 403q(d)(1)) is amended in the second sentence by striking ''Within thirty days of receipt of such reports,'' and inserting ''Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947,''.

(C) Section 21(g) of that Act (50 U.S.C. 403u(g)) is amended by striking paragraph (3) and inserting the following new paragraphs:

''(3) Not later than 30 days after the completion of an audit under paragraph (1), the Inspector General shall submit a copy of the audit to the Director of the Office of Management and Budget and the Director of Central Intelligence.

''(4) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Inspector General shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a copy of the audit completed under paragraph (1) during the preceding year.''.

(3) NATIONAL SECURITY AGENCY ACT OF 1959.—Section 11(a)(5) of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking ''Not later than'' and all that follows through ''the Senate'' and inserting ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report''.

(4) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 13 of the Classified Information Procedures Act (5 U.S.C. App.) is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

''(b) In the case of the semiannual reports (whether oral or written) required to be submitted under subsection (a) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.''.

(5) TITLE 10, UNITED STATES CODE.—(A) Section 437 of title 10, United States Code, is amended—

(i) in subsection (c), by striking ''Not later than'' and all that follows through ''of Congress'' and inserting ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))''; and

(ii) by striking subsection (d).

(B) Section 1611(e) of that title is amended—

(i) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraph (3)'';

(ii) by redesignating paragraph (2) as paragraph (3); and

(iii) by inserting after paragraph (1) the following new paragraph (2):

''(2) In the case of a report required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the Senate and the Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.''.

(6) INTELLIGENCE AUTHORIZATION ACTS.—(A) Section 809 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 108 Stat. 3454; 50 U.S.C. 2170b) is amended—

(i) by striking subsection (b) and inserting the following new subsection (b):

''(b) ANNUAL UPDATE.—

''(1) SUBMITTAL TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the President shall submit to the congressional intelligence committees a report updating the information referred to in subsection (a)(1)(D).

''(2) SUBMITTAL TO CONGRESSIONAL LEADERSHIP.—Not later than April 14 each year, the President shall submit to the congressional leadership a report updating the information referred to in subsection (a)(1)(D).

''(3) DEFINITIONS.—In this subsection:

''(A) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

''(B) CONGRESSIONAL LEADERSHIP.—The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.''; and

(ii) by redesignating subsection (e) as subsection (d).

(B) Paragraph (6) of section 811(c) of that Act (50 U.S.C. 402a(c)) is amended to read as follows:

''(6)(A) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

''(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

''(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense.''.

(C) Section 721 of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104–293; 110 Stat. 3474; 50 U.S.C. 236) is amended—

(i) in subsection (a), by striking ''Not later than'' and all that follows through ''the Director'' and inserting ''The Director'';

(ii) by redesignating subsection (b) as subsection (c);

(iii) by inserting after subsection (a) the following new subsection (b):

''(b) SUBMITTAL DATES.—(1) The report required by subsection (a) shall be submitted each year to the congressional intelligence committees on a semiannual basis on the dates provided in section 507 of the National Security Act of 1947.

''(2) The report required by subsection (a) shall be submitted each year to the congressional leadership on April 11 and October 11 of such year.

''(3) In this subsection:

''(A) The term 'congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

''(B) The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.''; and

(iv) in subsection (c), as so redesignated, by striking ''The reports'' and inserting ''Each report''.

(D) Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 111 Stat. 2253; 50 U.S.C. 402a note) is amended—

(i) in subsection (a)—

(I) by striking ''Not later than'' and all that follows through ''the Director of Central Intelligence'' and inserting ''The Director of Central Intelligence''; and

(II) by inserting ''on an annual basis'' after ''to Congress''; and

(ii) by adding at the end the end the following new subsection (c):

''(c) SUBMITTAL DATE OF REPORT TO LEADERSHIP OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—The date each year for the submittal to the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives and the Chairman and Ranking Member of the Select Committee on Intelligence of the Senate of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.''.

(E) Section 322(a)(6)(D) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 105–567; 114 Stat. 2844; 22 U.S.C. 7302(a)(6)(D)) is amended—

(i) in clause (i), by striking ''Beginning on'' and inserting ''Except as provided in clause (ii), beginning on'';

(ii) by redesignating clause (ii) as clause (iii);

(iii) by inserting after clause (i) the following new clause (ii):

''(ii) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of reports required to be submitted under clause (i) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal dates for such reports shall be as provided in section 507 of that Act.''; and

(iv) in clause (iii), as so redesignated, by striking ''report'' and inserting ''reports''.

(F) Section 606(b)(2) of the Counterintelligence Reform Act of 2000 (title VI of Public Law 106–567; 114 Stat. 2854) is amended—

(i) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraph (C)'';

(ii) by redesignating subparagraph (B) as subparagraph (C); and

(iii) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) In the case of a report required to be submitted under subparagraph (A) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.''.

(7) PUBLIC LAW 103–337.—Section 1012(c) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291–4(c)) is amended—

(A) in paragraph (1), by striking ''Not later than'' and inserting ''Except as provided in paragraph (2), not later than'';

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following new paragraph (2):

''(2) In the case of a report required to be submitted under paragraph (1) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.''.

(8) DAVID L. BOREN NATIONAL SECURITY EDUCATION ACT OF 1991.—The David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1901 et seq.) is amended—

(A) in section 806(a) (50 U.S.C. 1906(a))—

(i) by inserting ''(1)'' before ''The Secretary'';

(ii) in paragraph (1), as so designated, by striking ''the Congress'' and inserting ''the congressional intelligence committees'';

(iii) by designating the second sentence as paragraph (2) and indenting the left margin of such paragraph, as so designated, two ems;

(iv) in paragraph (2), as so designated, by inserting ''submitted to the President'' after ''The report''; and

(v) by adding at the end the following new paragraph (3):

''(3) The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 507 of the National Security Act of 1947.''; and

(B) in section 808 (50 U.S.C. 1908), by adding at the end the following new paragraph (5):

''(5) The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.''.

(9) FAIR CREDIT REPORTING ACT.—(A) Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(i) in subparagraph (D), by striking ''Not later than'' and inserting ''Except as provided in subparagraph (E), not later than'';

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph (E):

''(E) REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of a report to be submitted under subparagraph (D) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.''.

(B) Section 624(h) of that Act (15 U.S.C. 1681u(h)) is amended—

(i) by inserting ''(1)'' before ''On a semiannual basis,''; and

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

''(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.''.

(10) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)) is amended by striking ''On a semiannual'' and all that follows through ''the Senate'' and inserting ''On the dates provided in section 507 of the National Security Act of 1947, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))''.

**Subtitle B—Recurring Annual Reports**

**SEC. 411. ANNUAL ASSESSMENT OF SATISFACTION OF INTELLIGENCE COMMUNITY WITH COLLECTION, ANALYSIS, AND PRODUCTION OF INTELLIGENCE.**

Section 102 of the National Security Act of 1947 (50 U.S.C. 403) is amended by adding at the end the following new subsection:

''(i) ANNUAL ASSESSMENT OF SATISFACTION OF INTELLIGENCE COMMUNITY WITH COLLECTION, ANALYSIS, AND PRODUCTION OF INTELLIGENCE.—(1) The Assistant Director of Central Intelligence for Collection and the Assistant Director of Central Intelligence for Analysis and Production shall conduct each year a comprehensive review of the satisfaction of the elements of the intelligence community with the collection, analysis, and production of intelligence during the preceding year.

''(2) Each review for a year under paragraph (1) shall include—

''(A) an evaluation of the effectiveness of the intelligence collection, analysis, and production programs of the intelligence community in such year in meeting the requirements of the intelligence community for intelligence, including whether or not gaps exist in such programs; and

''(B) an assessment of the allocation of resources for the collection, analysis, and production of intelligence in such year to determine whether or not an alternative allocation of such resources would better meet the requirements of the intelligence community for intelligence.

''(3) The Assistant Directors shall jointly submit to the Director of Central Intelligence a report on each review conducted under paragraph (1). Each report shall—

''(A) set forth the results of the evaluation and assessment under paragraph (2);

''(B) describe any significant successes or failures in the collection, analysis, or production of intelligence in the year covered by such report; and

''(C) include any recommendations regarding the collection, analysis, or production of intelligence that the Assistant Directors consider appropriate.

''(4) The Director of Central Intelligence shall transmit to the congressional intelligence committees each report submitted under paragraph (3). The Director shall include in the transmittal of such report any comments and recommendations regarding such report that the Director considers appropriate.

''(5) The submittal date for a report under paragraph (4) each year shall be the date provided in section 507.''.

**SEC. 412. ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.**

Section 114 of the National Security Act of 1947, as amended by section 303(b)(6) of this Act, is further amended—

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

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

''(c) ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report assessing the following:

''(A) The current threat of attack on the United States using ballistic missiles or cruise missiles.

''(B) The current threat of attack on the United States using a chemical, biological, or nuclear weapon delivered by a system other than a ballistic missile or cruise missile.

''(2) Each report under paragraph (1) shall be a national intelligence estimate, or have the formality of a national intelligence estimate.''.

**SEC. 413. ANNUAL REPORT ON COVERT LEASES.**

Section 114 of the National Security Act of 1947, as amended by section 412 of this Act, is further amended—

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

(2) by inserting after subsection (c) the following new subsection (d):

''(d) ANNUAL REPORT ON COVERT LEASES.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report on each covert lease of an element of the intelligence community that is in force as of the end of the preceding year.

''(2) Each report under paragraph (1) shall include the following:

''(A) A list of each lease described by that paragraph.

''(B) For each lease—

''(i) the cost of such lease;

''(ii) the duration of such lease;

''(iii) the purpose of such lease; and

''(iv) the directorate or office that controls such lease.''.

**SEC. 414. ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS OF CERTAIN ELEMENTS OF THE INTELLIGENCE COMMUNITY FOR AUDITING PURPOSES.**

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 114 the following new section:

''ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS FOR AUDITING PURPOSES

''SEC. 114A. Not later each year than the date provided in section 507, the Director of Central Intelligence, Director of the National Security Agency, Director of the Defense Intelligence Agency, and Director of the National Imagery and Mapping Agency shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.''.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 114 the following new item:

''Sec. 114A. Annual report on improvement of financial statements for auditing purposes.''.

**SEC. 415. ANNUAL REPORT ON ACTIVITIES OF FEDERAL BUREAU OF INVESTIGATION PERSONNEL OUTSIDE THE UNITED STATES.**

(a) ANNUAL REPORT.—Chapter 33 of title 28, United States Code, is amended by adding at the end the following new section:

**''§ 540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States**

''(a) The Director of the Federal Bureau of Investigation shall submit to the appropriate committees of Congress each year a report on the activities of personnel of the Federal Bureau of Investigation outside the United States.

''(b) The report under subsection (a) shall include the following:

''(1) For the year preceding the year in which the report is required to be submitted—

''(A) the number of personnel of the Bureau posted or detailed outside the United States during the year;

''(B) a description of the coordination of the investigations, asset handling, liaison, and operational activities of the Bureau during the year with other elements of the intelligence community; and

''(C) a description of the extent to which information derived from activities described in subparagraph (B) was shared with other elements of the intelligence community.

''(2) For the year in which the report is required to be submitted—

''(A) a description of the plans, if any, of the Director—

''(i) to modify the number of personnel of the Bureau posted or detailed outside the United States; or

''(ii) to modify the scope of the activities of personnel of the Bureau posted or detailed outside the United States; and

''(B) a description of the manner and extent to which information derived from activities of the Bureau described in paragraph (1)(B) during the year will be shared with other elements of the intelligence community.

''(c)(1) In the case of the committees of Congress specified in subsection (d)(1), the date of the submittal each year of the report required by subsection (a) shall be February 1 of such year.

''(2) In the case of the committees of Congress specified in subsection (d)(2), the date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.

''(d) In this section, the term 'appropriate committees of Congress' means—

''(1) the Committees on the Judiciary of the Senate and House of Representatives; and

''(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of that title is amended by inserting after the item relating to section 540B the following new item:

''540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.''.

**SEC. 416. ANNUAL REPORTS OF INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY ON PROPOSED RESOURCES AND ACTIVITIES OF THEIR OFFICES.**

Section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (f), by striking ''this section'' and inserting ''subsections (a) through (e)'';

(2) by redesignating subsection (g) as subsection (h); and

(3) by inserting after subsection (f) the following new subsection (g):

''(g)(1) The Inspector General of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

''(A) The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the activities of the office of such Inspector General in such fiscal year.

''(B) The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the office of such Inspector General during such fiscal year.

''(C) An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the office of such Inspector General.

''(D) Any matters that such Inspector General considers appropriate regarding the

independence and effectiveness of the office of such Inspector General.

''(2) The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947.

''(3) In this subsection, the term 'congressional intelligence committees' shall have the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).''.

**SEC. 417. ANNUAL REPORT ON COUNTERDRUG INTELLIGENCE MATTERS.**

(a) ANNUAL REPORT.—The Counterdrug Intelligence Coordinating Group shall submit to the appropriate committees of Congress each year a report on current counterdrug intelligence matters. The report shall include the recommendations of the Counterdrug Intelligence Coordinating Group on the appropriate number of permanent staff, and of detailed personnel, for the staff of the Counterdrug Intelligence Executive Secretariat.

(b) SUBMITTAL DATE.—(1) In the case of the committees of Congress specified in subsection (c)(1), the date of the submittal each year of the report required by subsection (a) shall be February 1 of such year.

(2) In the case of the committees of Congress specified in subsection (c)(2), the date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 401 of this Act.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Appropriations of the Senate and House of Representatives; and

(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).

**Subtitle C—Other Reports**

**SEC. 431. REPORT ON EFFECT OF COUNTRY-RELEASE RESTRICTIONS ON ALLIED INTELLIGENCE-SHARING RELATIONSHIPS.**

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director of Central Intelligence shall, in consultation with the Secretary of Defense, submit to the congressional intelligence committees a report containing an assessment of the effect of the use of ''NOFORN'' classifications, and of other country-release policies, procedures, and classification restrictions, on intelligence-sharing relationships and coordinated intelligence operations and military operations between the United States and its allies. The report shall include an assessment of the effect of the use of such classifications, and of such policies, procedures, and restrictions, on counterterrorism operations in Afghanistan and elsewhere.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committee'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 432. EVALUATION OF POLICIES AND PROCEDURES OF DEPARTMENT OF STATE ON PROTECTION OF CLASSIFIED INFORMATION AT DEPARTMENT HEADQUARTERS.**

(a) EVALUATION REQUIRED.—Not later than December 31 of 2002, 2003, and 2004, the Inspector General of the Department of State shall conduct an evaluation of the policies and procedures of the Department on the protection of classified information at the Headquarters of the Department, including compliance with the directives of the Director of Central Intelligence (DCIDs) regarding the storage and handling of Sensitive Compartmented Information (SCI) material.

(b) ANNUAL REPORT.—Except as provided in subsection (c), not later than February 1 of 2003, 2004, and 2005, the Inspector General shall submit to the congressional intelligence committees a report on the evaluation conducted under subsection (a) during the preceding year.

(c) EXCEPTION.—The date each year for the submittal of a report under subsection (b) may be postponed in accordance with section 507(d) of the National Security Act of 1947, as added by section 401 of this Act.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 433. STUDY OF DEPARTMENT OF STATE CONSULAR SERVICES.**

(a) SENSE OF CONGRESS.—Congress compliments the officers of the Consular Service on the important role they perform daily, many times under difficult conditions, at United States embassies throughout the world. However, Congress is concerned that Consular Service officers, who provide the first line of defense against the admission of undesirable persons into the United States, are entry-level personnel and rotate out of Consular Service assignments as soon as possible.

(b) STUDY.—The Secretary of State shall conduct a study of—

(1) the Consular Services program of the Department of State and the organizational structure of the Consular Service within the Department, including promotion and training policies, rotation frequency, level of experience and seniority, level of oversight provided by senior Consular Service personnel, and consistency of consular services provided among the various United States embassies and consulates; and

(2) the feasibility of establishing a separate employment track within the Department of State for employees who would serve in the Consular Service on a permanent basis and not rotate out of Consular Service assignments.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report containing the findings of the study conducted under subsection (b).

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate; and

(2) the Committee on International Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

**Subtitle D—Repeal of Certain Report Requirements**

**SEC. 441. REPEAL OF CERTAIN REPORT REQUIREMENTS.**

(a) ANNUAL REPORT ON EXERCISE OF NATIONAL SECURITY AGENCY VOLUNTARY SEPARATION PAY AUTHORITY.—Section 301(j) of the National Security Act of 1947 (50 U.S.C. 409a(j)), as amended by section 303(b)(2)(B) of this Act, is further amended—

(1) by striking ''REPORTING REQUIREMENTS.—'' and all that follows through ''The Director'' and inserting ''NOTIFICATION OF EXERCISE OF AUTHORITY.—The Director''; and

(2) by striking paragraph (2).

(b) ANNUAL REPORT ON USE OF CIA PERSONNEL AS SPECIAL POLICEMEN.—Section 15(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o(a)) is amended by striking paragraph (5).

**TITLE V—COUNTERINTELLIGENCE ACTIVITIES**

**SEC. 501. SHORT TITLE; PURPOSE.**

(a) SHORT TITLE.—This title may be cited as the ''Counterintelligence Enhancement Act of 2002''.

(b) PURPOSE.—The purpose of this title is to facilitate the enhancement of the counterintelligence activities of the United States Government by—

(1) enabling the counterintelligence community of the United States Government to fulfill better its mission of identifying, assessing, prioritizing, and countering the intelligence threats to the United States;

(2) ensuring that the counterintelligence community of the United States Government acts in an efficient and effective manner; and

(3) providing for the integration of all the counterintelligence activities of the United States Government.

**SEC. 502. NATIONAL COUNTERINTELLIGENCE EXECUTIVE.**

(a) ESTABLISHMENT.—(1) There shall be a National Counterintelligence Executive, who shall be appointed by the President.

(2) It is the sense of Congress that the President should seek the views of the Attorney General, Secretary of Defense, and Director of Central Intelligence in selecting an individual for appointment as the Executive.

(b) MISSION.—The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

(c) DUTIES.—Subject to the direction and control of the President, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (c).

(2) To act as chairperson of the National Counterintelligence Policy Board under section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a), as amended by section 503 of this Act.

(3) To act as head of the Office of the National Counterintelligence Executive under section 504.

(4) To participate as an observer on such boards, committees, and entities of the Executive branch as the President considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 504.

**SEC. 503. NATIONAL COUNTERINTELLIGENCE POLICY BOARD.**

(a) CHAIRPERSON.—Section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VII of Public Law 103–359; 50 U.S.C. 402a) is amended—

(1) by striking subsection (b);

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (a) the following new subsection (b):

''(b) CHAIRPERSON.—The National Counterintelligence Executive under section 502 of the Counterintelligence Enhancement Act of 2002 shall serve as the chairperson of the Board.''.

(b) MEMBERSHIP.—That section is further amended by inserting after subsection (b), as amended by subsection (a)(3) of this section, the following new subsection (c):

''(c) MEMBERSHIP.—The membership of the National Counterintelligence Policy Board shall consist of the following:

''(1) The National Counterintelligence Executive.

''(2) Senior personnel of departments and elements of the United States Government,

appointed by the head of the department or element concerned, as follows:

''(A) The Department of Justice, including the Federal Bureau of Investigation.

''(B) The Department of Defense, including the Joint Chiefs of Staff.

''(C) The Department of State.

''(D) The Department of Energy.

''(E) The Central Intelligence Agency.

''(F) Any other department, agency, or element of the United States Government specified by the President.''.

(c) FUNCTIONS AND DISCHARGE OF FUNCTIONS.—That section is further amended by inserting after subsection (c), as amended by subsection (b) of this section, the following new subsection:

''(d) FUNCTIONS AND DISCHARGE OF FUNCTIONS.—(1) The Board shall—

''(A) serve as the principal mechanism for—

''(i) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

''(ii) upon the direction of the President, resolving conflicts that arise between elements of the Government conducting such activities; and

''(B) act as an interagency working group to—

''(i) ensure the discussion and review of matters relating to the implementation of the Counterintelligence Enhancement Act of 2002; and

''(ii) provide advice to the National Counterintelligence Executive on priorities in the implementation of the National Counterintelligence Strategy produced by the Office of the National Counterintelligence Executive under section 504(e)(2) of that Act.

''(2) The Board may, for purposes of carrying out its functions under this section, establish such interagency boards and working groups as the Board considers appropriate.''.

**SEC. 504. OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.**

(a) ESTABLISHMENT.—There shall be an Office of the National Counterintelligence Executive.

(b) HEAD OF OFFICE.—The National Counterintelligence Executive shall be the head of the Office of the National Counterintelligence Executive.

(c) LOCATION OF OFFICE.—The Office of the National Counterintelligence Executive shall be located in the Executive Office of the President.

(d) GENERAL COUNSEL.—(1) There shall be in the Office of the National Counterintelligence Executive a general counsel who shall serve as principal legal advisor to the National Counterintelligence Executive.

(2) The general counsel shall—

(A) provide legal advice and counsel to the Executive on matters relating to functions of the Office;

(B) ensure that the Office complies with all applicable laws, regulations, Executive orders, and guidelines; and

(C) carry out such other duties as the Executive may specify.

(e) FUNCTIONS.—Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce on an annual basis a strategic planning assessment of the counterintelligence requirements of the United States to be known as the National Threat Identification and Prioritization Assessment.

(2) NATIONAL COUNTERINTELLIGENCE STRATEGY.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under paragraph (1), to produce on an annual basis a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(3) IMPLEMENTATION OF NATIONAL COUNTERINTELLIGENCE STRATEGY.—To evaluate on an on-going basis the implementation of the National Counterintelligence Strategy and to submit to the President periodic reports on such evaluation, including a discussion of any shortfalls in the implementation of the Strategy and recommendations for remedies for such shortfalls.

(4) NATIONAL COUNTERINTELLIGENCE STRATEGIC ANALYSES.—As directed by the Director of Central Intelligence and in consultation with appropriate elements of the departments and agencies of the United States Government, to oversee and coordinate the production of strategic analyses of counterintelligence matters, including the production of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) NATIONAL COUNTERINTELLIGENCE PROGRAM BUDGET.—In consultation with the Director of Central Intelligence—

(A) to coordinate the development of budgets and resource allocation plans for the counterintelligence programs and activities of the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and other appropriate elements of the United States Government;

(B) to ensure that the budgets and resource allocations plans developed under subparagraph (A) address the objectives and priorities for counterintelligence under the National Counterintelligence Strategy; and

(C) to submit to the National Security Council periodic reports on the activities undertaken by the Office under subparagraphs (A) and (B).

(6) NATIONAL COUNTERINTELLIGENCE COLLECTION AND TARGETING COORDINATION.—To develop priorities for counterintelligence investigations and operations, and for collection of counterintelligence, for purposes of the National Counterintelligence Strategy, except that the Office may not—

(A) carry out any counterintelligence investigations or operations; or

(B) establish its own contacts, or carry out its own activities, with foreign intelligence services.

(7) NATIONAL COUNTERINTELLIGENCE OUTREACH, WATCH, AND WARNING.—

(A) COUNTERINTELLIGENCE VULNERABILITY SURVEYS.—To carry out and coordinate surveys of the vulnerability of the United States Government, and the private sector, to intelligence threats in order to identify the areas, programs, and activities that require protection from such threats.

(B) OUTREACH.—To carry out and coordinate outreach programs and activities on counterintelligence to other elements of the United States Government, and the private sector, and to coordinate the dissemination to the public of warnings on intelligence threats to the United States.

(C) RESEARCH AND DEVELOPMENT.—To ensure that research and development programs and activities of the United States Government, and the private sector, direct attention to the needs of the counterintelligence community for technologies, products, and services.

(D) TRAINING AND PROFESSIONAL DEVELOPMENT.—To develop policies and standards for training and professional development of individuals engaged in counterintelligence activities and to manage the conduct of joint training exercises for such personnel.

(f) ADDITIONAL REQUIREMENTS REGARDING NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT AND NATIONAL COUNTERINTELLIGENCE STRATEGY.—(1) A National Threat Identification and Prioritization Assessment under subsection (e)(1), and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (e)(2), and any modification of such strategy, shall not go into effect until approved by the President.

(3) The National Counterintelligence Executive shall submit to the congressional intelligence committees each National Threat Identification and Prioritization Assessment, or modification thereof, and each National Counterintelligence Strategy, or modification thereof, approved under this section.

(4) In this subsection, the term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(g) PERSONNEL.—(1) Personnel of the Office of the National Counterintelligence Executive may consist of personnel employed by the Office or personnel on detail from any other department, agency, or element of the Federal Government. Any such detail may be on a reimbursable or non-reimbursable basis, at the election of the head of the agency detailing such personnel.

(2) Notwithstanding section 104(d) or any other provision of law limiting the period of the detail of personnel on a non-reimbursable basis, the detail of an officer or employee of United States or a member of the Armed Forces under paragraph (1) on a non-reimbursable basis may be for any period in excess of one year that the National Counterintelligence Executive and the head of the department, agency, or element concerned consider appropriate.

(3) The employment of personnel by the Office, including the appointment, compensation and benefits, management, and separation of such personnel, shall be governed by the provisions of law on such matters with respect to the personnel of the Central Intelligence Agency, except that, for purposes of the applicability of such provisions of law to personnel of the Office, the National Counterintelligence Executive shall be treated as the head of the Office.

(4) Positions in the Office shall be excepted service positions for purposes of title 5, United States Code.

(h) SUPPORT.—(1) The Attorney General, Secretary of Defense, and Director of Central Intelligence may each provide the Office of the National Counterintelligence Executive such support as may be necessary to permit the Office to carry out its functions under this section.

(2) Subject to any terms and conditions specified by the Director of Central Intelligence, the Director may provide administrative and contract support to the Office as if the Office were an element of the Central Intelligence Agency.

(3) Support provided under this subsection may be provided on a reimbursable or non-reimbursable basis, at the election of the official providing such support.

(i) AVAILABILITY OF FUNDS FOR REIMBURSEMENT.—The National Counterintelligence Executive may, from amounts available for the Office, transfer to a department or agency detailing personnel under subsection (g), or providing support under subsection (h), on a

reimbursable basis amounts appropriate to reimburse such department or agency for the detail of such personnel or the provision of such support, as the case may be.

(j) CONTRACTS.—(1) Subject to paragraph (2), the National Counterintelligence Executive may enter into any contract, lease, cooperative agreement, or other transaction that the Executive considers appropriate to carry out the functions of the Office of the National Counterintelligence Executive under this section.

(2) The authority under paragraph (1) to enter into contracts, leases, cooperative agreements, and other transactions shall be subject to any terms, conditions, and limitations applicable to the Central Intelligence Agency under law with respect to similar contracts, leases, cooperative agreements, and other transactions.

(k) TREATMENT OF ACTIVITIES UNDER CERTAIN ADMINISTRATIVE LAWS.—(1) The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Office of the National Counterintelligence Executive.

(2) The files of the Office shall be treated as operational files of the Central Intelligence Agency for purposes of section 701 of the National Security Act of 1947 (50 U.S.C. 431) to the extent such files meet criteria under subsection (b) of that section for treatment of files as operational files of an element of the Agency.

(l) OVERSIGHT BY CONGRESS.—The location of the Office of the National Counterintelligence Executive within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office; or

(2) any personnel of the Office.

(m) DESIGNATION OF OFFICE AS ELEMENT OF INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) in subparagraph (I), by striking ''and'' at the end;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph (J):

''(J) the Office of the National Counterintelligence Executive; and''.

## TITLE VI—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

### SEC. 601. FINDINGS.

Congress makes the following findings:

(1) Research and development efforts under the purview of the intelligence community are vitally important to the national security of the United States.

(2) The intelligence community must operate in a dynamic, highly-challenging environment, characterized by rapid technological growth, against a growing number of hostile, technically-sophisticated threats. Research and development programs under the purview of the intelligence community are critical to ensuring that intelligence agencies, and their personnel, are provided with important technological capabilities to detect, characterize, assess, and ultimately counter the full range of threats to the national security of the United States.

(3) There is a need to review the full range of current research and development programs under the purview of the intelligence community, evaluate such programs against the scientific and technological fields judged to be of most importance, and articulate program and resource priorities for future research and development activities to ensure a unified and coherent research and development program across the entire intelligence community.

### SEC. 602. NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

(a) ESTABLISHMENT.—There is established a commission to be known as the ''National Commission for the Review of the Research and Development Programs of the United States Intelligence Community'' (in this title referred to as the ''Commission'').

(b) COMPOSITION.—The Commission shall be composed of 12 members, as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) A senior intelligence official of the Office of the Secretary of Defense, as designated by the Secretary of Defense.

(3) Three members appointed by the Majority Leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.

(4) Two members appointed by the Minority Leader of the Senate, in consultation with the Vice Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.

(5) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.

(6) Two members appointed by the Minority Leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

(c) MEMBERSHIP.—(1) The individuals appointed from private life as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

(A) research and development programs;

(B) technology discovery and insertion;

(C) use of intelligence information by national policymakers and military leaders; or

(D) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(d) CO-CHAIRS.—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

(2) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

(3) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

(e) APPOINTMENT; INITIAL MEETING.—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

(f) MEETINGS; QUORUM; VACANCIES.—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day.

(g) ACTIONS OF COMMISSION.—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(3) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

(h) DUTIES.—The duties of the Commission shall be—

(1) to conduct, until not later than the date on which the Commission submits the report under section 607(a), the review described in subsection (i); and

(2) to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on the results of the review.

(i) REVIEW.—The Commission shall review the status of research and development programs and activities within the intelligence community, including—

(1) an assessment of the advisability of modifying the scope of research and development for purposes of such programs and activities;

(2) a review of the particular individual research and development activities under such programs;

(3) an evaluation of the current allocation of resources for research and development, including whether the allocation of such resources for that purpose should be modified;

(4) an identification of the scientific and technological fields judged to be of most importance to the intelligence community;

(5) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of other departments and agencies of the Federal Government; and

(6) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of the private sector.

### SEC. 603. POWERS OF COMMISSION.

(a) IN GENERAL.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony,

receive such evidence, and administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

(2) Subpoenas may be issued under subparagraph (1)(B) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—(1) The Director of Central Intelligence shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission's duties under this title.

(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

(e) PROHIBITION ON WITHHOLDING INFORMATION.—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(g) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

**SEC. 604. STAFF OF COMMISSION.**

(a) IN GENERAL.—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III or chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(b) CONSULTANT SERVICES.—(1) The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

**SEC. 605. COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**SEC. 606. TREATMENT OF INFORMATION RELATING TO NATIONAL SECURITY.**

(a) IN GENERAL.—(1) The Director of Central Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

(b) ACCESS AFTER TERMINATION OF COMMISSION.—Notwithstanding any other provision of law, after the termination of the Commission under section 607, only the Members and designated staff of the congressional intelligence committees, the Director of Central Intelligence (and the designees of the Director), and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

**SEC. 607. FINAL REPORT; TERMINATION.**

(a) FINAL REPORT.—Not later than September 1, 2003, the Commission shall submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report as required by section 602(h)(2).

(b) TERMINATION.—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to Congress concerning the final report referred to in that paragraph and disseminating the report.

**SEC. 608. ASSESSMENTS OF FINAL REPORT.**

Not later than 60 days after receipt of the final report under section 607(a), the Director of Central Intelligence and the Secretary of Defense shall each submit to the congressional intelligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

**SEC. 609. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**

(a) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

(b) FREEDOM OF INFORMATION ACT.—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

**SEC. 610. FUNDING.**

(a) TRANSFER FROM THE COMMUNITY MANAGEMENT ACCOUNT.—Of the amounts authorized to be appropriated by this Act for the Intelligence Technology Innovation Center of the Community Management Account, the Deputy Director of Central Intelligence for Community Management shall transfer to the Director of Central Intelligence $2,000,000 for purposes of the activities of the Commission under this title.

(b) AVAILABILITY IN GENERAL.—The Director of Central Intelligence shall make available to the Commission, from the amount transferred to the Director under subsection (a), such amounts as the Commission may require for purposes of the activities of the Commission under this title.

(c) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (b) shall remain available until expended.

**SEC. 611. DEFINITIONS.**

In this title:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.—The term ''intelligence community'' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

## NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DODD. Mr. President, I wise to announce that the Committee on Rules and Administration will meet at 9:00 a.m., in SR–301, Russell Senate Office Building, on Thursday, October 3, 2002, to hold a hearing on the nomination of Bruce R. James, of Nevada, to be Public Printer.

Individuals and organizations wishing to submit a statement for the hearing record are requested to contact Carole Blessington of the Rules Committee staff on 202–224–0278. For further information regarding this hearing, please contact Ms. Blessington.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, September 25, 2002, at 9:30 a.m., in open session to continue to receive testimony on U.S. policy on Iraq.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet jointly with the Committee on Finance to conduct a hearing entitled, ''Innovative Finance: Beyond the Highway Trust Fund,'' to explore alternatives for financing our surface transportation system.

The hearing will be held on Wednesday, September 25, 2002, at 9:30 a.m., in the Finance Committee's hearing room, SD–215.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Wednesday, September 25, 2002, at 9:30 a.m., to hear testimony on ''Innovative Financing: Beyond the Highway Trust Fund,'' to explore alternatives for financing our surface transportation system.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 25, 2002 at 2:00 p.m. to hold a hearing on Iraq.

AGENDA

Witnesses: The Honorable Richard C. Holbrooke, Former U.S. Ambassador to the United Nations, Counselor, Council on Foreign Relations New York, NY; the Honorable Robert C. McFarlane, Former National Security Advisor, Chairman, Energy and Communications Solutions, Washington, DC.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in Executive Session during the session of the Senate on Wednesday, September 25, 2002, at 10:00 a.m. in SD–430. The Committee will consider the following agenda.

AGENDA

S. ___, Reauthorization of the Office of Educational Research and Improvement (OERI)

S. ___, Reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA)

S. 2499, The Food Allergen Consumer Protection Act

S. 830, Breast Cancer and Environmental Research Act of 2001

S. ___, Birth Defects and Developmental Disabilities Prevention Act of 2002

S. 1806, The Pharmacy Education Aid Act of 2001

S. 969, The Lyme and Infectious Disease Information and fairness in treatment (LIFT) Act.

S. ___, Quality of Care for Individuals with Cancer Act

S. ___, the Diabetes Prevention and Treatment Act

S. 2821, The Improved Nutrition and Physical Activity (IMPACT) Act

*Nominations:*

Maria Mercedes Guillemard, of Puerto Rico, to be a Member on the National Museum services Board;

David Wenzel, of Pennsylvania, to be a Member on the National Council on Disability;

Marco Rodriguez, of California, to be a Member on the National Council on Diability;

Milton Aponte, of Florida, to be a Member on the National Council on Disability;

Michele Guillermin, of Maryland, to be Chief Financial Officer, Corporation for National and Community Service;

Glenn Bernard Anderson, of Arkansas, to be a Member on the National Council on Disability;

Barbara Gillcrist, of New Mexico, to be a Member on the National Council on Disability;

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, September 25, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting to consider S. 958, the Western Shoshone Claims Distribution Act, and H.R. 2880, the Five Nations Citizens Land Reform Act, to be followed immediately by a hearing to receive testimony on the President's appointment of Quanah Crossland stamps to serve as Commission for the Administration for Native Americans, and the appointment of Phil Hogen to serve as Chairman of the National Indian Gaming Commission.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Asbestos Litigation'' on Wednesday, September 25, 2002 in Dirksen Room 106 at 10:00 a.m.

TENTATIVE WITNESS LIST

Panel I: The Honorable Max Baucus, United States Senator (D–MT); The Honorable Ben Nelson, United States Senator (D–NE).

Panel II: David T. Austern, Esq., General Counsel, Manville Personal Injury Settlement Trust, Fairfax, VA; Frederick M. Baron, Esq., Baron & Budd, P.C., Dallas, TX; Walter E. Dellinger, Esq., O'Melveny & Myers LLP, Washington, D.C., Jonathan P. Hiatt, Esq., General Counsel, AFL–CIO, Washington, D.C.; Steven Kazan, Esq., Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farrise, A Professional Law Corporation, Oakland, CA.

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

SUBCOMMITTEE ON CONSUMER AFFAIRS

Mr. REID. Mr. President: I ask unanimous consent that the Subcommittee on Consumer Affairs to be authorized to meet on Wednesday, September 25, 2002, at 2:30 p.m. on State of the Tourism Industry one Year After September 11th.

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

SUBCOMMITTEE ON HOUSING AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Transportation of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, September 25, 2002, at 2:30 p.m. to conduct an oversight hearing on ''Affordable Housing Production and working families, Part 3.''

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

## RECOGNIZING MARY BAKER EDDY

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 458, just received from the House.

The PRESIDING OFFICER (Mr. DAYTON). The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 458) recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 458) was agreed to.

The preamble was agreed to.

## INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of Calendar No. 490, S. 2506, the intelligence authorization; that the committee-reported amendments be withdrawn; the only amendment in order to be a Graham amendment; that the substitute amendment be agreed to, the bill, as amended, be read three times, and the Intelligence Committee then be discharged from further consideration of H.R. 4628, the House companion, and the Senate then proceed to its consideration; that all after the enacting clause be stricken, and the text of S. 2506, as amended, be inserted in lieu thereof; that the bill be read the third time, passed, and the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate without intervening action or debate; and that S. 2506 be returned to the calendar.

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

Mr. GRAHAM. Mr. President, S. 2506, a bill to authorize appropriations for the intelligence community for fiscal year 2003, represents the first intelligence budget for the War on Terrorism—a war where intelligence is our most effective weapon. The Congress historically has considered the annual Intelligence Authorization bill to be important legislation, but now it has become a matter of national survival. Without an enhanced and effective intelligence capability integrated into the significant capabilities of the U.S. military and tightly linked to law enforcement and the new Department of Homeland Security, we will continue be at the mercy of international terrorists bent on the destruction of our society and we may suffer even more devastating attacks.

Since the tragedy of September 11, the men and women of the U.S. intelligence community have worked every day, nonstop to protect us against those who would seek to do us harm. This bill represents an important step in our effort to provide them with the necessary resources and authorities to get the job done. In its budget request for fiscal years 2003 through 2007, the administration proposes significant resource increases for our national intelligence effort. Such increases build upon substantial supplemental appropriations approved for the intelligence community for fiscal years 2001 and 2002 after September 11.

As the community has noted in past years, the challenges confronting the intelligence community have, for too long, received inadequate fiscal attention. I am encouraged by the commitment of resources proposed by the administration for fiscal year 2003 and beyond. The intelligence community is poised to benefit from an infusion of additional people and funding that can provide momentum for a range of intelligence efforts against those individuals, groups, and states—to include al-Qaida and Osama bin Laden—that threaten our security and safety. As the intelligence community is our first line of defense, the administration's fiscal year 2003 request for the National Foreign Intelligence Program is a necessary first step in correcting the deficiencies of the past.

Earlier this year, the Select Committee on Intelligence conducted a thorough review of the administration's budget request for the National Foreign Intelligence Program for fiscal year 2003. This review included an extensive examination of the individual programs and agencies—such as the Central Intelligence Agency and the National Reconnaissance Office—which comprise the U.S. intelligence community. Building on the approach we took last year, our review once again focused on specific priority areas as well as individual agencies and functions.

The committee highlighted five areas that must continue to receive priority attention in the near term if intelligence is to fulfill its role in our overall national security strategy and the ongoing war on terrorism. They are: (1) revitalizing the National Security Agency; (2) correcting deficiencies in human intelligence; (3) addressing the imbalance between intelligence collection and analysis; (4) rebuilding a robust research and development program; and (5) increasing the capabilities of measurements and signatures intelligence to fulfill key intelligence requirements. These priorities address the basic building blocks of intelligence—capabilities that will support the War on Terrorism as well as the multitude of other intelligence requirements. S. 2506 authorizes additional resources for these areas.

While the additional funding for intelligence programs goes a long way towards alleviating existing near term deficiencies, other long term problems remain to be addressed. We face a looming crisis in our ability to collect critical information from key platforms as a result of unexpected failures; a major acquisition program is experiencing significant cost overruns and schedule slippage; and, we have inadequate funding to ensure that information collected by the next generation of space-based sensors will be processed, exploited, and disseminated appropriately to intelligence analysts.

Higher levels or resources, however, will not address all of the important challenges which confront the intelligence community. The intelligence community must overcome an aversion to risk that has crept into the culture since the end of the cold war. The world will be a dangerous and unstable place for foreseeable future. In order to protect our country, we will need to deal with unsavory characters and we will need to operate in unsafe parts of the world. The CIA has suffered casualties in the war in Afghanistan and we must steel ourselves to the inevitability of more loss of life. Some problems, such as the intelligence community's current organization or its ability to exchange information effectively and efficiently with other government agencies, may require additional legislative actions in the future. The bicameral investigation into the events of September 11 is ongoing and I expect that the investigation will result in recommendations for actions to be taken to strengthened our intelligence community.

The bill includes legislative provisions that are important additions to the work the Intelligence Committee did last year—both in the fiscal year 2002 Intelligence Authorization Act and the USA–PATRIOT Act. I will summarize a few of these provisions:

Section 304 is designed to make improvements in the information available to the Committee each year as it prepares its budget authorizations in the areas of counterterrorism, counterproliferation, counternarcotics and counterintelligence. The provision requires the administration each year to specify in its budget submission the aggregate amount requested in each of these four critical areas. Currently, these numbers are spread throughout the budget submission in the requests for particular programs in individual agencies. The committee believes that it is essential to rational decision-making in the budget process—both for the administration and for Congress—to have ''cross-cut'' budget numbers so that it is clear how much money is being requested across the Government in these important areas.

Section 306 is a provision that supplements changes implemented under the USA–PATRIOT Act. Under that act, foreign intelligence information that has been collected by law enforcement agencies in the course of criminal investigations can, and in fact must, be provided to the Director of Central Intelligence to be included in the all-source analytic products prepared by intelligence analysts. In other words, these ''dots'' of foreign intelligence that are collected in criminal cases, including grand jury proceedings and criminal wiretaps, now flow to the intelligence community. The purpose of Section 306 is to clarify that the intelligence committees of the Congress, in the conduct of their oversight of the intelligence community, shall also have access to that law-enforcement-derived information that has been provided to the intelligence agencies. The intelligence committees cannot conduct effective oversight of the intelligence agencies if there are categories of information upon which intelligence operations and analyses are based that is off limits of the committees.

Sections 311 and 312 follow up on provisions that were included in the USA–PATRIOT Act and the FY02 Intelligence Authorization bill. Congress required the Director of Central Intelligence to review and report to the intelligence committees his recommendations of how best to create

two new centers: ''The National Virtual Translation Center'' and the ''Foreign Terrorist Asset Tracking Center.'' We have finally received those reports and Sections 311 and 312 establish those centers in law as part of the intelligence community. We are hopeful that the very difficult problems of translation resources in the intelligence community and the efficient and effective tracking of terrorist finances will be significantly enhanced by the creation of these centers.

Section 313 is similar to S. 2459, a bill introduced by Senator WYDEN. This excellent provision addresses the problem we have all heard so much about in the press: Is there a complete and accurate list of known or suspected international terrorists that is derived from all-source information available to the U.S. Government and that is provided to all agencies whose job is to protect our borders from penetration by terrorists? This provision requires the establishment of a ''Terrorist Identification Classification System'' that will be available to all Federal agencies, State and local governments and, as appropriate, to foreign governments. It will solve a problem that we have identified in our committee of the proliferation of ''watch lists'' in our Government—all with different suspected terrorists names, used by different agencies for different purposes.

Title V of the bill establishes in statute the National Counterintelligence Executive, the ''NCIX''. At the urging of our committee, the President created the NCIX in 2001 to provide the U.S. Government in the counterintelligence area with (1) strong, policy-driven leadership; (2) new and enhanced counterintelligence capabilities; and (3) coherent program, strategies and cooperative approaches. The committee's oversight of this fledging effort revealed problems, however, that Title V is designed to remedy. By establishing the NCIX in statute and placing it in the Executive Office of the President, with oversight by the intelligence committees, the committee believes that the NCIX leadership problems, resource constraints and, overall, lack of sufficient status and visibility within the Government, will be remedied.

Finally, Title VI of the bill establishes a National Commission for Review of Research and Development Programs of the United States Intelligence Community. The committee supports a strong intelligence community R & D program. Research and Development supports virtually all other intelligence community efforts by laying the groundwork for the necessary modernization and innovation of intelligence capabilities. The purpose of the Commission, to be composed of government officials and private sector experts, is to review the current state of research and development in the intelligence community and, in particular, to determine if the level of resources devoted to various efforts across the community is in line with those scientific and technological fields judged to be of the greatest importance to the intelligence needs of the future.

I mentioned earlier the tireless efforts of the men and women of the intelligence community. I am privileged as chairman of the Intelligence Committee to travel to the different agencies around Washington and to visit various installations around the world. I am consistently impressed with competence, professionalism and dedication of these individuals. For years they have been unsung heroes, serving under difficult conditions and often putting their lives on the line. They do this not for money or glory—indeed the nature of their work means that success goes unacknowledged—but because they love their country and they have a profound sense of duty. We owe these people a debt of gratitude of their sacrifices, now more than ever before.

I must mention another group of people who are critical to the process of bringing this legislation to the floor. The staff of the Senate Intelligence Committee has once again done a superb job preparing this bill. The staff is led by Al Cumming the staff director and Bill Duhnke the minority staff director. They have guided the staff through a very difficult year including the anthrax evacuation and the launching of the joint investigation with the House Intelligence Committee into events related to September 11. Through all the turmoil they kept the committee focused on our work and our oversight responsibilities. They are assisted by Kathleen McGhee, Chief Clerk, Bob Filippone, Deputy Staff Director, Jim Hensler, Deputy Minority Staff Director, Vicki Divoll, General Counsel, Chris Ford, Minority Counsel, Melvin Dubee, Budget Director, and the rest of a very talented staff. A special thanks goes to Jim Wolfe, the committee's Security Director for his efforts to ensure the security of our people and our classified materials last fall and winter when the committee was forced to work from temporary offices during the anthrax episode.

Finally and most importantly, I must acknowledge the excellent cooperation and support of Vice Chairman SHELBY. Senator SHELBY has served on the committee for almost 8 years and his experience and commitment have been critical to the success of the committee. We have not agreed on everything but we have agreed on the goal of giving the American people the best intelligence organization possible and have worked together toward that goal. I have appreciated his support and advice.

At this time in our Nation's history, our support for the U.S. intelligence community is vitally important. I urge support for this bill.

Mr. SHELBY. Mr. President, we have before us the Intelligence Authorization bill for fiscal year 2003. This is a bill which we have debated extensively in the Select Committee on Intelligence, and which we reported out in May.

Especially during the global war against terrorism in which our nation is currently engaged, it is important that we give the U.S. intelligence community the support and encouragement it needs to do its vital job—and that we hold it properly accountable for its activities through the oversight process. This bill provides healthy measures of support, encouragement, and accountability, and I urge my colleagues to support it.

While we cannot discuss actual budget figures in an unclassified setting, I can assure my colleagues that this bill provides a significant increase in funding to the U.S. intelligence community, money that it needs and will continue to need as we demand more and better work from it than ever before. Even the world's sole remaining superpower with unchallenged military supremacy cannot be everywhere, and the war on terrorism taxes our capabilities in new and often unprecedented ways. More than anything else, this current conflict is an intelligence-dependent war. We need to do everything we can to ensure that our polilcymakers and our military commanders get the best possible intelligence support. This bill will help ensure that they do.

In addition, our bill also increases the Intelligence Community's accountability to the elected representatives of the American people whose job it is to ensure proper oversight of our intelligence bureaucracy. I would like to mention just a few examples of this.

First, our bill clarifies, rationalizes, and codifies the series of reporting requirements that form such an important part of the process by which Congress obtains information and analyses of intelligence community activities.

The bill also ensures that the intelligence community will be able to continue to fulfill its reporting requirements to the intelligence oversight committees of Congress in the wake of the changes to information-sharing laws contained in the USA PATRIOT Act of 2001.

Our bill also requires that the National Foreign Intelligence Program budget provide specific breakdowns for annual budget aggregates relating to counterterrorism, counterproliferation, counternarcotics, and counterintelligence. This greater specificity, we hope, will enable Congress better to assess intelligence community resourcing decisions and ensure that the right priorities receive our support in years ahead.

The two sides of our committee have not agreed on every detail of the classified appendix that accompanies our report on this bill, but on balance we feel that this is a piece of legislation that will provide much-needed support for—and improve the accountability of—the United States intelligence community.

I urge the Senate to pass this bill promptly.

The committee amendments were withdrawn.

The amendment (No. 4752), in the nature of a substitute, was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 4628), as amended, was read the third time and passed.

The Presiding Officer (Mr. DAYTON) appointed Mr. GRAHAM, Mr. LEVIN, Mr. ROCKEFELLER, Mrs. FEINSTEIN, Mr. WYDEN, Mr. DURBIN, Mr. BAYH, Mr. EDWARDS, Ms. MIKULSKI, Mr. SHELBY, Mr. KYL, Mr. INHOFE, Mr. HATCH, Mr. ROBERTS, Mr. DEWINE, Mr. THOMPSON, and Mr. LUGAR conferees on the part of the Senate.

Mr. HOLLINGS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## ORDERS FOR THURSDAY, SEPTEMBER 26, 2002

Mr. HOLLINGS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:15 a.m., Thursday, September 26; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until 11:15 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Republican leader or his designee; that at 11:15 a.m., the Senate resume consideration of the homeland security bill.

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

## PROGRAM

Mr. HOLLINGS. Mr. President, cloture was filed on the Gramm-Miller amendment to the homeland security bill. Therefore, Senators have until 1 p.m. on Thursday to file first-degree amendments.

## ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. HOLLINGS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:35 p.m., adjourned until Thursday, September 26, 2002, at 9:15 a.m.

# EXTENSIONS OF REMARKS

## TRIBUTE TO ROBERT H. CASTELLINI

**HON. ROB PORTMAN**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. PORTMAN. Mr. Speaker, I rise today to pay tribute to Robert H. Castellini, a friend, community leader and accomplished businessperson who will have the honor of being inducted into the Greater Cincinnati and Northern Kentucky Business Hall of Fame on September 26, 2002. Bob is being honored for his outstanding business and community leadership.

Bob is a Cincinnati native. He graduated with a Bachelor of Arts from Georgetown University in Washington, D.C., in 1963, and went on to earn his M.B.A. from the University of Pennsylvania in 1967. After earning his M.B.A., he served in the U.S. Army for 2 years until 1969.

Bob's business successes come from his association with the produce firm, Castellini Company, where he started in 1966 as a Vice President. From 1970 to 1992 he was President and CEO of the company, and, from 1992 to the present, he has served as the company's Chairman of the Board of Directors. Under his leadership, the firm experienced significant growth, becoming one of the premier fresh produce distribution firms in the Midwest.

The Castellini Company is one of Cincinnati's oldest companies. It was founded in 1896 by Bob's grandfather, Joseph J. Castellini. Bob has been with the company for over 35 years, and his outstanding leadership and hard work are directly responsible for its continued success.

Bob also has been very active in our community. He serves on the board of directors of several Greater Cincinnati privately-held corporations. He also is a member of the Chief Executives Organization and the Cincinnati Business Committee in addition to serving on the Board of Trustees for the National Underground Railroad Freedom Center, Xavier University, the Good Samaritan Hospital, and the Cincinnati Art Museum. In addition, Bob has received a number of other honors and awards including the Distinguished Service Citation Award from the National Conference for Community and Justice; the People of Vision Award from Prevent Blindness of Southwest Ohio; and the Founders Award from Xavier University.

Bob also is a devoted family man. He and his wife, Susan, have four children and four grandchildren. All of us in the Cincinnati area congratulate him on his induction into the Greater Cincinnati and Northern Kentucky Business Hall of Fame.

## HONORING DR. JEROME DOLAN

**HON. ROBERT MENENDEZ**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Dr. Jerome Dolan for his contributions in the medical field and his outstanding service to his community. Dr. Dolan was awarded the Louis T. Scialli Memorial Award on September 17, 2002, at the United Way Kick-Off, which was held at the Crowne Plaza in Secaucus, New Jersey.

Born in Jersey City, Dr. Dolan graduated from St. Peter's College in 1944. He attended NYU College of Medicine after serving in the US Navy, and later joined the U.S. Army Medical Corp as a Korean War Combat Surgeon. Upon his return home, he completed his residency in Bellevue Hospital's Obstetrics, Gynecology and Pathology Department.

As an accomplished doctor, Dr. Dolan focused on the care and well being of others, and opened his own medical practice in 1955. He enjoyed a successful career in the medical field as he became Director of Ob/Gyn at St. Joseph's Medical Center in Paterson, NJ, before becoming the Medical Director of Margaret Hague Hospital in Jersey City.

Dr. Dolan is a member of the American Legion, Korean War Veterans Association, First Cavalry Division Association, Eighth Cavalry Regiment Medics 1950 Survivors Association and a member of the United Way of Hudson County Board of Directors since 1965.

The Louis T. Scialli Memorial Award is given in recognition of the spirit of community in the ''gentlemen of Hudson County.'' This award also symbolizes the spirit of the United Way, ''to increase the organized capacity of people to care for one another.''

Dr. Dolan and his wife Marguerite May have four children, five grandchildren, and one great-grandchild.

Today, I ask my colleagues to join me in honoring Dr. Jerome Dolan for his many accomplishments in the medical field and his selfless contributions to our community.

## A PROCLAMATION RECOGNIZING GEORGE ARNETT

**HON. ROBERT W. NEY**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. NEY. Mr. Speaker, whereas, George Arnett is a professional truck driver for Roadway Express; and

Whereas, George Arnett has successfully driven one million miles without a preventable accident; and

Whereas, George Arnett should be commended for reaching this safety milestone; and

Whereas, George Arnett has demonstrated a steadfast commitment to the safety of our nation's highways;

Therefore, I join with the residents of the entire 18th Congressional District of Ohio in honoring and congratulating George Arnett for his outstanding accomplishment.

## AMERICAN FRONTIERS: A PUBLIC LANDS LEGACY

**HON. GEORGE RADANOVICH**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. RADANOVICH. Mr. Speaker, America has an important shared legacy in its parks, forests and other public lands. They bring us close to the natural world and its wildlife; contribute to physical and mental health; add to our understanding of history and culture; and provide important economic opportunities to many communities across the West. Unfortunately, not enough people understand the multiple facets of America's public lands. As Chairman of the National Parks Subcommittee, I am happy to see a major effort being mounted to address this issue. ''American Frontiers: A Public Lands Journey'' is a 3,000-mile expedition currently being undertaken by two teams of adventurers. They are crossing only public lands and waters in six states, by foot, horseback, mountain bike, canoe, SUV and boat. Their two month journey will culminate in Salt Lake City on September 28, 2002, National Public Lands Day. Along the trail, they are sharing dispatches and individual journals relating their experiences and impressions of the public lands by videophone and through an interactive Internet website located at www.americanfrontiers.net. These communication efforts are especially directed at America's youth. I applaud the efforts of Public Lands Interpretive Association, which has spearheaded this project, along with the many dedicated individuals, volunteers, and sponsors of this impressive journey. I look forward to hearing more about their experiences in America's national parks.

## TRIBUTE TO GEORGE A. SCHAEFER, JR.

**HON. ROB PORTMAN**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. PORTMAN. Mr. Speaker, I rise today to pay tribute to George A. Schaefer, Jr., a distinguished constituent, a friend and an accomplished business leader who will be inducted into the Greater Cincinnati and Northern Kentucky Business Hall of Fame on September 26, 2002. George is being honored for his many successes at the helm of Fifth Third Bancorp and for his leadership in our community.

George was born in Cincinnati in 1945. He attended Elder High School, and went on to

earn a Bachelor of Science in Engineering from the U.S. Military Academy, West Point, in 1967. In 1974, he graduated with an M.B.A. from Xavier University.

Following West Point, George proudly served our country in the U.S. Army. From 1967 to 1969, he was stationed in Europe, and, between 1969 and 1970, he served in Vietnam, where he earned a Bronze Star.

George will tell you that his experience at West Point and service in the Army prepared him well for the business world. He initially joined Fifth Third Bank as a management trainee in 1971, and, by 1990, he was the President and CEO of the bank. Since then, Fifth Third has routinely posted double digit growth rates. Under George's tenure, total revenues have grown from $393 million to $4.2 billion—an astonishing 1000 percent increase. Currently, Fifth Third is the 15th largest bank in the U.S., and among the top ten U.S. banks in market valuation. George is rightfully regarded as one of the top bankers in our nation.

George's other activities and civic commitments include: Chairman of the Board of the University of Cincinnati; the Children's Hospital Center Medical Center Executive Committee; the Greater Cincinnati Chamber of Commerce Executive Committee; and the Health Alliance of Greater Cincinnati Executive Committee. He has given of his time and energy to a number of other worthy organizations including: the Cincinnati Institute of Fine Arts; the Johnny Bench Scholarship Fund; the United Way; and the Taft Museum of Art.

With all of his great accomplishments, he's particularly proud of his marriage of 35 years to his wife, Betty, and their three children and four grandchildren. All of us in the Greater Cincinnati area congratulate George on his induction into the Greater Cincinnati and Northern Kentucky Business Hall of Fame, and wish him the very best on his current and future endeavors.

## IN HONOR OF DENA MALLACH

### HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Dena Mallach for her outstanding service as Executive Director of the Jewish Family and Counseling Service (JFCS) of Jersey City, Bayonne, and Hoboken. Mrs. Mallach was awarded the 2002 Mary T. Norton Memorial Award on September 17, 2002, at the United Way Kick-Off, which was held at the Crowne Plaza in Secaucus, New Jersey.

Mrs. Mallach has devoted her life to the care of others. Her inspiring credentials include being trained a disaster mental health worker within the Red Cross system, her work in child protective and developmentally disabled youth services, on a crisis intervention team, and over fourteen years of experience at the JFCS, where she was appointed Executive Director in September, 2000.

Some of her most admirable feats have come at the darkest of times. She volunteered in the recovery efforts of countless local disasters, such as the deadly Seton Hall fire, and in numerous national emergencies, such as Hurricane George. And when her country needed her most, she worked tirelessly to help the families and colleagues of the victims of the terrorist attacks on America. In addition to personal care, she directed the opening of a branch office in Hoboken after 9/11 and brought aid and advocacy services to the distressed residents.

This award is given in recognition of the deep commitment to human services exemplified by Congresswoman Mary T. Norton. It recognizes women who have made outstanding contributions to the success of programs both in their community and throughout the nation.

Today, I ask my colleagues to join me in honoring Dena Mallach for her selfless dedication and volunteerism in her community and beyond.

## HONORING DR. MICHAEL VINCIGUERRA

### HON. JERRY WELLER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. WELLER. Mr. Speaker, I rise today to honor Dr. Michael Vinciguerra, who will be inaugurated today as the 8th President of the University of St. Francis in Joliet, IL.

Dr. Vinciguerra comes to the University of St. Francis from the State University of New York (SUNY) at Farmingdale where he served since 1970 as professor, vice president for academic affairs, and provost. While at SUNY-Farmingdale, he led the effort to transform the college to a four-year institution as well as helping to create a campus Bioscience Park in collaboration with Cold Spring Harbor Laboratory and a leading biotechnology company, OSI Pharmaceutical. He also initiated a campus-wide outcomes assessment program; pursued continuous improvement in programs and upgraded fiscal enrollment management.

Experienced in Catholic Education, Dr. Vinciguerra is a graduate of Iona College in New Rochelle, NY with a degree in chemistry. He holds a master of science degree and Ph.D. in physical chemistry from Adelphi University. Michael and Grace recently relocated in Joliet, IL, and have one son, Michael, who is married to Darcy and one grandson, Christopher who lives in Spotsylvania, VA.

With his wealth of academic experience and his ability to work closely with the community, Dr. Vincinguerra is the right choice to lead the University of St. Francis community in its 2002–2003 Annual Theme of ''A Time of Renewal, to reconnect, reaffirm and rejuvenate the many qualities that make St. Francis unique.''

Mr. Speaker, I ask this body to join me in welcoming Dr. Michael Vinciguerra as the President of the University of St. Francis.

## A PROCLAMATION RECOGNIZING GERALD BENSON

### HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. NEY. Mr. Speaker, whereas, Gerald Benson became a citizen of the United States of America 25 years ago on November 8, 1977; and

Whereas, Gerald Benson showed his responsible citizenship by also voting on the same November 8, 1977; and

Whereas, Gerald Benson has demonstrated a commitment to his community of Cambridge, Ohio; and

Whereas, Gerald Benson has worked hard to become an American success story;

Therefore, I join with the residents of the entire 18th Congressional District of Ohio in congratulating Gerald Benson on the 25th Anniversary of his being a United States of America Citizen.

## TRIBUTE TO ROSS LOVE

### HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. PORTMAN. Mr. Speaker, I rise today to pay tribute to Ross Love, a friend, community leader, and accomplished businessperson who will be inducted into the Greater Cincinnati and Northern Kentucky Business Hall of Fame on September 26, 2002. Ross is being honored for his outstanding business career, which includes leadership roles at the Procter & Gamble Company, Blue Chip Broadcasting, and Blue Chip Enterprises.

Ross was born and raised in Philadelphia, Pennsylvania, and graduated from Syracuse University in 1968 with a Bachelor of Arts. Shortly after earning his degree, Ross began a very successful career with Procter & Gamble, where he worked for 28 years in marketing and advertising. After running a number of the company's key brands, he was appointed Vice President of Advertising and oversaw the marketing of Procter & Gamble's products for 10 years.

In 1995, Ross founded Blue Chip Broadcasting, which initially included an investment in just one radio station. By the time he sold Blue Chip Broadcasting last year, he had grown the company into a 19-station group—the second largest African-American owned radio broadcasting company in the United States. Currently, Ross is the President and CEO of Blue Chip Enterprises, a company he founded in 2001. Blue Chip Enterprises has helped increase the number of African-American owned businesses in the Cincinnati region.

Even while achieving great business successes, Ross has been active in making our community and our country stronger. Nationally, he led the Partnership for a Drug-Free America in developing virtually all of its anti-drug messages targeted to the African-American community. Among his important local activities, he serves as Vice Chair of the Board of Trustees of the United Way of Greater Cincinnati, and as Co-Chair of Cincinnati Community Action Now (CAN).

Ross and his wife, Cheryl, have been married for over 30 years, and they have two children, Jonathan and Ayanna. All of us in the Cincinnati area congratulate Ross on his induction into the Greater Cincinnati and Northern Kentucky Business Hall of Fame, and wish him the very best with his current and future endeavors.

## A BILL TO ENSURE THAT THE IRS ACCURATELY ACCOUNT FOR FICA TAXES PAID BY EMPLOYERS ON EMPLOYEE'S TIP INCOME

### HON. WALLY HERGER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HERGER. Mr. Speaker, I rise today with my colleague from Tennessee, Mr. TANNER, to introduce the Tip Tax Fairness Act, a bill to require the Internal Revenue Service (IRS) to accurately account for FICA taxes paid by employers on employee's tip income.

As we all know, many employees in the service sector of the business community earn a substantial portion of their income from tips. Recognizing this, Congress passed legislation years ago requiring employers and employees to pay FICA payroll taxes on tip income. This ensures that an employee's total earnings are reflected in their Social Security wage history, which determines the employee's Social Security benefits upon retirement.

In the IRS's effort to collect the FICA taxes they believe is owed on unreported tips, the agency has created an aggregate method for assessing employers which is inconsistent with congressional intent. Congress did not intend FICA taxes to be paid on an aggregate basis, because earnings subject to FICA taxes are intended to be credited to an employee's Social Security wage history.

Under current law, employees are required to report all of their tips to their employer. The employer is required to send this information to the IRS, along with the employer and employee share of the FICA taxes owed. If the IRS believes the amount of tip income reported is not accurate the agency will audit the employer, bill the employer using an aggregate estimate, and collect the employer's portion of the FICA taxes. However, the agency does not credit the employee's Social Security wage history. By not doing so, the agency is disregarding one of the reasons Congress required employers to pay FICA taxes on tips.

Furthermore, this lack of accounting on the part of the IRS, and the use of aggregate estimates, creates a dramatic shift in the burden of tax collection. Under this method, it is the employer who must determine if there was underrepomng of income, not the IRS, and the employer who must disprove an inaccurate assessment. Many service providers have expressed concerns that this shift in burden pits the employer against their own employees, effectively turning them into ''tip police.''

The bill Mr. TANNER and I are introducing today is a solution that we believe employees and employers can support. Simply stated, this legislation requires the IRS to ensure that assessments paid by employers, for FICA taxes owed on unreported tips, are credited to each affected employee's Social Security wage history. As such, this measure requires the IRS to use FICA taxes as Congress intended.

Mr. Speaker, I would like to thank all of our original cosponsors for supporting this worthy legislation.

## HONORING THE LIFE OF CUNG PHAM AND HIS SERVICE TO ST. ANSELM'S CROSS-CULTURAL CENTER IN GARDEN GROVE

### HON. LORETTA SANCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Ms. SANCHEZ. Mr. Speaker, I rise today to honor the life of Cung Pham of Garden Grove, California.

Cung Pham served as the director of educational legislation and planning prior to the fall of the Republic of Vietnam 1975. After the country's collapse, he was detained in a concentration camp for seven years before escaping by boat in 1982 to spend time in a refugee camp in Thailand.

Mr. Pham eventually ended up in the Orange County community. Using his understanding of the refugee experience, Mr. Pham worked as the director of the refugee resettlement program at St. Anselm's Cross Cultural Center in Garden Grove. His great compassion and organizational skills helped make the program a model for the entire country, helping thousands of refugees become assimilated to American life. He helped them with paperwork, enrolled them in English classes, and trained them for job interviews.

Sadly, at the young age of 63, Mr. Pham lost his battle to cancer on September 14, 2002. He was known for his quiet and gentle ways and was greatly admired by those he helped and those with whom he worked.

## RECOGNIZING THE JEWISH NATIONAL FUND

### HON. JOSEPH M. HOEFFEL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HOEFFEL. Mr. Speaker, I rise today to recognize the Jewish National Fund which is celebrating its 100th anniversary on October 6, 2002. The Jewish National Fund (JNF) was established with the express purpose of bringing Jews from around the world together and make the Zionist dream of a Jewish state a reality.

JNF was formed at the Fifth Zionist Congress in order to motivate people from around the world to collect spare change in tin ''Blue Boxes,'' to be used to purchase the land that would one day become the state of Israel. These Blue Boxes became a symbol of Zionism and they were distributed in Jewish communities everywhere, creating a bond that was felt by the Jewish community as a whole. Through this unity, the Zionist movement built the nation of Israel that continues to flourish and thrive.

In the spring of 1903, JNF acquired its first parcel of land of 800 acres in Hadera, Israel. Immediately, JNF focused on greening the land through the planting of trees. To date, JNF has planted over 210 million trees on 250,000 acres across Israel. JNF has grown with the country's changing needs by building infrastructure for essential new communities which accommodate Israel's growing population. The JNF is responsible for building access roads, providing employment for waves of new immigrants, and improving the quality of life for Israelis across the country.

Today JNF continues to be a major force in the development of Israel through water resource development, education, research and development, community development and tourism and recreation. These successes across such a wide range of activities have benefited the lives of countless Israeli citizens. The reach of JNF extends beyond Israel's boarders providing a link between Jews around the world with the Jewish state.

I congratulate the Jewish National Fund on its 100 years of service to the Zionist movement and the state of Israel and wish them many more years of continued success.

## NATIONAL RADIOLOGIC TECHNOLOGY WEEK

### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. DUNCAN. Mr. Speaker, I would like to recognize the contribution of medical imaging and radiation professionals to the care of Americans as we celebrate National Radiologic Technology Week (NRTW) November 3–9, 2002.

Many people are unaware of who radiologic technologists are or what they do. This week to honor those dedicated health care professionals was started in 1979 by the American Society of Radiologic Technologists (ASRT). The purpose for the week is to educate the public about the important contributions of medical imaging and radiation therapy professionals in providing quality patient care and a safer health care environment.

Radiologic technologists are the medical personnel who perform diagnostic imaging examinations and administer radiation therapy treatments. They are educated in anatomy, patient positioning, examination techniques, equipment protocols, radiation safety, radiation protection and patient care.

NRTW takes place annually and is celebrated across the Country at hospitals, clinics, imaging centers, educational institutions, corporations and affiliate organizations and at public events held at schools, health fairs, fund-raisers and other community locations. NRTW also commemorates the founding of the ASRT in October 1920. ASRT is the oldest and largest national, not-for-profit member association representing medical imaging and radiation therapy professionals, with a membership exceeding 100,000. Since 1920, ASRT has helped foster the professional growth and educational needs of radiologic technologists throughout the world. The Society represents individual practitioners, educators, students and managers/administrators in radiologic technology, radiation therapy, nuclear medicine and sonography.

I would like to congratulate and thank our Country's medical imaging and radiation therapy professionals for a job well done. It is an honor to commemorate and celebrate National Radiologic Technology Week.

## CELEBRATING THE 75TH ANNIVERSARY OF HYDE PARK COMMUNITY UNITED METHODIST CHURCH

### HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. PORTMAN. Mr. Speaker, I rise today to congratulate Hyde Park Community United Methodist Church on the 75th anniversary of its consecration.

The origins of the Church can be traced to 1879 when the Mount Lookout Methodist Episcopal Church was organized by fifteen Methodists who were meeting in area homes. In 1880, a wooden church was erected at the site of the current church on the corner of Observatory Road and Grace Avenue on land donated by John Kilgour.

Meanwhile, in 1907, another small group of congregants left the Mount Lookout M.E. and formed the Hyde Park Methodist Episcopal Church. They constructed a building at 2753 Erie Avenue, which was completed in 1915. Both churches continued to grow. After the Mount Lookout M.E. Church was damaged by termites and a tornado and the Hyde Park M.E. Church building experienced structural difficulties, Bishop Henderson urged the two churches to merge, and in 1922 the two became the Mt. Lookout Hyde Park United Methodist Episcopal Church.

In 1923, the pastor of the newly merged churches, Reverend Warren Dunham, articulated the vision of the community church, and encouraged the construction of a new building. The congregation moved quickly to construct a large and impressive Gothic structure that required substantial financial sacrifice by its members. The present building was dedicated on the site of the original Mount Lookout M.E. Church on September 25, 1927.

Since 1927, the Church has grown significantly, enlarging its buildings and adding to its membership. But its Invitation, dedicated on its founding, in 1927, remains unaltered, and as timeless today as then. It reads:

To all who mourn and need comfort
To all who are tired and need rest
To all who are friendless and want friendship
To all who are lonely and want companionship
To all who are homeless and want sheltering love
To all who pray, and all who do not, but ought
To all who sin and need a savior;
and to who-so-ever-will, this church opens wide its doors, and in the name of Jesus, our Lord, bids welcome!

The inclusive spirit of this Invitation is one reason Hyde Park Community United Methodist Church has been blessed by such growth and success over the years. The Church community is a shining example of the United Methodist Church's current nationwide inclusiveness campaign of ''Open Hearts, Open Minds, Open Doors.''

Over the years, the Church has had a proud tradition of not just serving the spiritual needs of the congregation, but also reaching out to help others. Consistent with the vision laid out in the 1920s, the Church has been active in the community. This includes the Hyde Park community, the Greater Cincinnati area and our greater national and world community through its ministries on Christian education, United Methodist Women, Spiritual Direction, affiliations with churches in other countries, and mission programs.

All of us in Greater Cincinnati congratulate the Church, its pastors, parishioners, and staff on the occasion of the Church's 75th anniversary. We also look forward to many more years of the Hyde Park Community United Methodist Church and its open Invitation and commitment to our community.

## TRIBUTE TO MACK POWELL

### HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. MATSUI. Mr. Speaker, I rise in tribute to my friend Mack Powell. On August 8, the Sacramento real estate community lost one of its most beloved and dedicated leaders when Mack Powell passed away. As his family and friends gather to remember Mack's many outstanding achievements and contributions to his community, I ask all of my colleagues to join with me in saluting this truly remarkable citizen of Sacramento.

Born in Sardis Mississippi on September 20, 1920, Mack was orphaned at an early age and was raised in an orphanage. Mack would go on to serve his country by enlisting in the Army during World War II. After his stint in the Army, Mack moved to Texas in 1946. While in Texas, Mack was elected and served with great distinction as the Mayor of Pecos, Texas.

In hopes of securing a better future for himself, Mack moved to California in 1955. In time, Mack owned and operated a furniture store in Sacramento. It was also in Sacramento where Mack met his wife, Paula. Mack and Paula were happily married in 1967. In the following year, Mack made his initial entry into the real estate business. After obtaining his sales license and later his brokers license, Mack and Paul founded Suburban Properties, Inc.

By 1970, Mack had begun to get involved with the Sacramento Board of Realtors. During the course of his illustrious career, Mack would serve on over 100 committees between the national, state, and local Realtor associations. Locally, Mack served as the Sacramento Association of Realtors' President in 1986. On a statewide level, Mack was the California Association of Realtors Regional Vice President in 1986, and after much hard work, he was selected President of California Association of Realtors in 1991. It was also in 1991 that Mack was named the Realtor of the year for the Sacramento Association of Realtors and California Association of Realtors.

Mack also served as a Federal District Coordinator of the National Association of Realtors for my a Congressional district. It was simply a great joy and privilege to have had the opportunity to work with Mack over the years. Mack was a gentle man of unparalleled ethics who always had the best interests of the community and his industry in mind in all his endeavors. The citizens of Sacramento should be thankful that they could call Mack Powell one of their own.

Widely touted as one of Sacramento's most cherished and prominent citizens, Mack was the consummate community leader. While astute and active politically, he was both a civic leader and exemplary citizen who was trusted and respected across all political persuasions. His intellect, integrity, good cheer, energy, and compassion made him a natural gatherer of people. Mack always found time to help others, whatever their stations in life.

Mr. Speaker, as Mack Powell's family and friends pay tribute to his many wonderful achievements, I am honored to express my gratitude and respect for one of Sacramento's most outstanding citizens. His accomplishments are unparalleled, and it was truly a privilege for me to count him as one of my dearest friends. I ask all my colleagues to join me in acknowledging Mack's invaluable contributions to Sacramento.

## IN HONOR OF LESLEY MOORE

### HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Lesley Moore for twenty years of service to the Hudson County community and to Catholic Community Services. Ms. Moore was awarded the 2002 Mary T. Norton Memorial Award on September 17, 2002, at the United Way Kick-Off, which was held at the Crowne Plaza in Secaucus, New Jersey.

Lesley Moore has selflessly dedicated herself to a life of social service focused on the needs of others, including at-risk children and their families, the homeless, and people living with HIV.

Ms. Moore's leadership has been exemplified in her work as Children and Family Services Division Director, as well as her supervision of the Children and Family Services of Catholic Community Services. She has successfully expanded the abilities of these organizations to assist those most in need, and continues to administer the following programs: home-based services; an adoption agency; juvenile justice programs; school-based counseling; youth development, and youth mentoring.

Lesley Moore's hard work ethic and spirit of kindness is also found in her participation in a number of professional groups, such as: Hudson County Case Assessment Review Team; Hudson County Children's Interagency Coordinating Council, Hudson County Coalition on Domestic Violence; Hudson County Coalition of Non-Profits; Hudson County HIV/AIDS Planning Council; Hudson County Human Services Advisory Commission; and Hudson County Youth Services Commission.

This award is given in recognition of the deep commitment to human services exemplified by Congresswoman Mary T. Norton. It recognizes women who have made outstanding contributions to the success of programs, both in their community and throughout the nation.

Today, I ask my colleagues to join me in honoring Lesley Moore for her critical role in helping to improve the lives of families and children in Hudson County.

## INTRODUCTION OF SENIORS ACCESS TO HEALTH CARE ACT OF 2002

### HON. DAVE WELDON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. WELDON of Florida. Mr. Speaker, today I am introducing the Seniors Access to Health Care Act of 2002 in order to guarantee that senior citizens continue to have access to health care providers under the Medicare program. This bill includes most of the provisions of a bill (H.R. 4954) that was approved earlier this year to restore payments to health care providers, ensuring that they continue to see seniors.

I am introducing this bill, today because the Senate has failed to approve legislation establishing a prescription drug plan for seniors and a restoration of payments to providers. I am fully committed to enacting a prescription drug plan for senior citizens, but given the failure of Democrat Majority Leader TOM DASCHLE to secure Senate passage of a prescription drug bill, I believe it would be doubly harmful to seniors if we allowed additional provider cuts to go into effect. It is for this reason that I believe it is important that we at least ensure that these additional cuts are averted. We should plug this hole while we continue to work together to address the need for a prescription drug plan for seniors.

Last year physicians saw a 5 percent reduction in their reimbursement rates from Medicare. This year, without the changes proposed in my legislation, they will see another 5.7 percent reduction. This cut comes at a time when providers are facing an unprecedented rise in medical malpractice premiums, and a dramatic increase in the costs of health insurance premiums for their own employees. A second year of reductions in Medicare reimbursements will lead more providers to drop out of the Medicare program or to leave medical practice altogether. It is important for seniors that we not allow this to happen.

The other significant change from the House-passed bill is the removal of the requirement for nationwide competitive bidding in durable medical equipment. I believe additional work needs to be done in this arena to fully understand its impacts on savings and quality of care.

## IN RECOGNITION OF BART'S 30TH ANNIVERSARY

### HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Ms. PELOSI. Mr. Speaker, I rise today to pay tribute to the San Francisco Bay Area Rapid Transit District, known as BART, as it celebrates its 30th anniversary this month. BART is the San Francisco Bay Area's premier mode of public transit and has carried nearly 2 billion passengers quickly and efficiently since it opened in 1972.

Established in 1957 by the California State Legislature to relieve the unbearable traffic congestion on Bay Area roads, the BART concept was popular with the public from the very beginning. BART service began on September 11, 1972, an event that signaled a renaissance in rail transit in the United States. It was the first new rail rapid transit system built in the U.S. in more than 60 years and the first fully automated transit system in the world. The American Public Works Association named BART one of the ''Top Ten Public Works Projects of the 20th Century,'' an honor it shares with the Golden Gate Bridge, the Panama Canal, and the Hoover Dam.

The BART District includes the counties of Alameda, Contra Costa and San Francisco, with service to San Mateo County. On an average weekday, BART carries about 310,000 passengers. The system consists of 95 miles of double track and 39 stations. With nearly 3,500 employees throughout the system, a $420 million operating budget and $561 million capital budget, BART is an important part of the Bay Area's economy.

BART continues to grow and thrive. Four new stations and 8.7 additional miles of double track are set to open in early 2003 with service to the San Francisco International Airport and the Peninsula. BART will connect with Caltrain, a 77-mile commuter rail service, at the Millbrae station to create a 180-mile combined regional rail network. Continued regional transportation needs are spurring several BART extensions, now in the planning stages. These extensions would take BART to Warm Springs, to San Jose, to the Oakland International Airport, and possibly other heavily traveled corridors in the East Bay.

Mr. Speaker, BART has consistently provided safe, fast, and reliable transportation to Bay Area residents and visitors. BART has served the San Francisco Bay Area well for 30 years, and we look forward to an even more extensive and more efficient rail system 30 years from now. I urge my colleagues to Join me in wishing BART a Happy 30th Birthday.

## ARTICLE BY PROFESSOR DAVID YAMADA

### HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. MCDERMOTT. Mr. Speaker, as Congress grapples with how to best create a Department of Homeland Security that will meet our nation's security needs, I'd like to include in the CONGRESSIONAL RECORD comments that Professor David Yamada made regarding this issue. Mr. Yamada is a co-founder of the Workers' Rights Committee of Americans for Democratic Action and a professor of law at Suffolk University Law School in Boston. I share many of Mr. Yamada's concerns.

(By Professor David Yamada)

In the hours and weeks that followed the September 11 attacks, thousands of unionized police officers and firefighters representing the diversity of America secured the damaged sites and sifted through the horrible destruction. Few events in American history have more strongly attested to the value of having dedicated public employees on the front lines of our civil defense network.

Nevertheless, the Bush Administration's proposed Homeland Security legislation threatens to make second class citizens of federal airport security workers who are hired to screen passengers and to inspect packages and baggage. If Congress approves the bill in its current form, newly hired airport screening personnel could be denied all basic labor protections. These include the rights to join a union, to negotiate over wages and working conditions, to be free from discrimination and harassment, and to be protected against retaliation for whistle blowing.

This very real possibility is rooted in a little-known loophole in the recently enacted Aviation and Transportation Security Act. The loophole allows the Department of Transportation, ''notwithstanding any other provision of law,'' to ''employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment'' for all federal airport screening personnel. Read literally, this allows the DOT to fix summarily all terms of employment for airport security workers, without regard to any existing federal labor law protections.

The recently proposed Homeland Security bill would transfer the airport screening functions specified in the Aviation and Transportation Security Act to the new Department of Homeland Security. The bill further provides that the Secretary of Homeland Security will be granted all powers previously accorded to the federal agencies absorbed into the new Department. This means that the Secretary will inherit the same alarming carte blanche authority originally granted to the DOT to unconditionally mandate all terms of employment for airport security screeners.

This short, seemingly insignificant provision carries huge implications. First, it obviously means that thousands of new federal employees could be denied their basic labor rights at the whim of a single Cabinet member. In addition, it would send an unprecedented message that fundamental worker protections, by their very existence, are inconsistent with the goal of national security. Indeed, if airport baggage screeners can be required to give up these civil rights under the guise of national security, can police officers, firefighters, and even privately employed transportation workers be far behind?

Finally, stripping these employees of their labor protections would defeat the goal of hiring a skilled and motivated workforce for this important security function. Recall that one of the original concerns in light of September 11 was that, because airport screening workers were so poorly paid, the security companies had trouble attracting qualified personnel, and that many of these workers reported for duty exhausted from working other jobs to pay their bills. How many qualified, trustworthy individuals will apply for and remain in a job in which giving up virtually all basic legal protections is a condition of employment?

Hard-won legal protections for workers should not be sacrificed in the name of national security without valid, convincing reasons for doing so. In this case, the manner in which airport security workers have been put at risk of losing their rights smacks of an insidious attempt to ''sneak one through'' Congress, taking undue advantage of the public's understandable fears about the safety of air travel. Because the Aviation and Transportation Security Act already spells out in detail the necessary skill levels and security clearances for airport screeners, there is no principled reason also to require a wholesale removal of their labor safeguards.

Consideration of the Homeland Security bill now provides Congress with an opportunity to undo the hidden damage of the Aviation and Transportation Security Act. In the aftermath of September 11, President Bush stood in solidarity with police officers

and firefighters at Ground Zero. Against a background of terrible tragedy, he symbolically affirmed the importance of rank-and-file public workers in American society. Hopefully the letter of the proposed Homeland Security law will be amended to reflect the spirit of that vital gesture.

## RECOGNIZING THE CONTRIBUTIONS OF DR. JAMES WITHERS IN ADDRESSING THE HEALTH CARE NEEDS OF PITTSBURGH'S HOMELESS POPULATION

### HON. MICHAEL F. DOYLE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. DOYLE. Mr. Speaker, I rise today to acknowledge the work of Dr. James Withers, the Director of Operation Safety Net in Pittsburgh, Pennsylvania. Dr. Withers recently received national recognition from the Robert Wood Johnson Foundation's Community Health Leadership Program. The prestigious award includes a $120,000 grant to provide additional funding for his program.

Dr. Withers, a Forest Hills internist and member of Mercy Hospital's medical and teaching staffs, founded Operation Safety Net to address the health care needs of Pittsburgh's homeless population. The program partners volunteer medical professionals and medical students with former homeless people to provide medical care to the city's unsheltered homeless.

Dr. Withers launched Operation Safety Net in 1993, after spending almost a year visiting Pittsburgh's streets dressed as a homeless person to learn about their health care needs. He and a friend walked down countless dark streets, alleys, and abandoned buildings to find people in need of medical care. He even carried his medical supplies in a backpack to ease their concerns.

Now, the 16 Operation Safety Net teams of volunteers, students and former homeless, do much the same, searching out those in need of care. Dr. Withers, or ''Doc Jim'' as he is known on the street, still walks with the teams several nights a week.

The project now provides care for about 900 patients annually—the majority are substance abusers and many suffer from mental illness.

In addition to helping Pittsburgh's unsheltered homeless population, Operation Safety Net also offers a valuable experience for the medical students and residents who participate as volunteers—giving them a hands-on lesson in caring for disadvantaged patients.

Mr. Speaker, I am honored to recognize Dr. James Withers for this national award and express my gratitude for his determination and leadership. His lesson reaches well beyond the medical students and residents who volunteer with Operation Safety Net. It carries a message for all of us.

Dr. Withers' nominator for the award put it best by saying, ''Jim's advocacy, creativity, and leadership are tireless. He teaches all who are willing to listen, in Pittsburgh and beyond, that each of the homeless has a name and that each has a story.''

## CONGRATULATING THE CALIFORNIA ARMENIAN HOME

### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate the California Armenian Home on the occasion of celebrating 50 years of dedication and service to the needs of the elderly people in the Armenian community on September 21, 2002. The California Armenian Home was established to provide housing for the aging population who could no longer live on their own.

In 1952, the California Home for the Armenian Aged opened with accommodations for 35 persons in downtown Fresno, California. Since its inception, the Home has evolved into a community of 168 residents and is considered to have one of the highest standards of senior care. The highly skilled nursing staff provides excellent care for assisted living.

The California Armenian Home was dedicated in honor of the K. Arakelian Foundation and the Armenian-American Citizens' League. Prior to the Home's grand opening, sponsorship of only eleven rooms in the Home had been assured, leaving twenty-four rooms without sponsorship. Mrs. K. Arakelian, a widow of one of the Home's founders, was concerned and decided to coordinate a ''Grand Opening Shower.'' More than 600 persons attended the shower and brought gifts such as blankets, sheets, pillows, and cash donations to help complete furnishing the Home.

Mr. Speaker, it is my pleasure to congratulate the California Armenian Home of Fresno on the occasion of their 50th year anniversary. I urge my colleagues to join me in wishing the California Armenian Home many more years of continued success.

## A GRAVE AND GATHERING DANGER

### HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HORN. Mr. Speaker, the House will soon take up the question of whether to authorize the President to use any necessary means, including military force, to require Iraq to abide by its agreements with the United Nations to destroy its stockpiles of chemical and biological weapons. There is of course no question that Saddam Hussein has repeatedly violated these agreements and that he continues to pursue the development of weapons of mass destruction. The only real question is whether Congress and the United Nations will enforce these international resolutions.

Mr. Speaker, I strongly support the President and I believe that it is important that we act promptly on this issue. The President made clear in his address to the General Assembly of the United Nations that there is a clear and compelling case for forcing Saddam Hussein to obey UN agreements or face real and immediate consequences. As we prepare to debate this issue, I urge my colleagues to review the President's remarks because I believe this speech not only could help avert a new Persian Gulf war but also could help restore credibility to a United Nations that has been drifting toward irrelevance.

I have been a strong and consistent supporter of the United Nations. I believe it is essential that we have a strong, credible and effective international forum where disputes can be debated and resolved without bloodshed, where problems that stretch beyond the boundaries and resources of any one nation can be tackled by the joint efforts of many countries and where those who flout the laws of civilized behavior not only face condemnation but international penalties with real bite.

In his speech, President Bush presented two challenges. One was to Saddam Hussein to abide by a series of UN resolutions over the past 12 years requiring him to halt production of weapons of mass destruction, to end internal political repression in Iraq and to abide by the terms of the ceasefire that ended the Gulf War. The other challenge was to the United Nations to enforce its own resolutions, if Saddam continues to murder and maim within Iraq while furiously working to complete his arsenal of chemical, biological and nuclear weapons.

By ordering Saddam to disarm and then failing to take any effective action to enforce those orders, the United Nations has endangered its own credibility. Since the 1991 ceasefire, the UN Security Council has issued 12 specific demands for Iraq to comply with requirements to eliminate weapons of mass destruction and other steps. Iraq has repeatedly and brazenly refused. As a result, UN weapons inspection teams left Iraq four years ago, ending any check on Saddam's growing arsenal.

President Bush made clear that this steady drift into danger will not be allowed to continue. Saddam has a well-documented history of invading neighboring nations like Iran and Kuwait, and using highly lethal concoctions of poison gas and nerve agents despite all prohibitions in international law and in civilized behavior. He also has a fully documented history of gassing entire villages of opposition groups within Iraq, as in 1988 when attacks against Kurdish villages killed hundreds of women and children.

The President puts it very simply: ''The history, the logic and the facts lead to one conclusion: Saddam Hussein's regime is a grave and gathering danger. To suggest otherwise is to hope against the evidence. To assume this regime's good faith is to bet the lives of millions and the peace of the world in a reckless gamble, and this is a risk we must not take.''

President Bush then posed two unavoidable questions that only the United Nations can now answer: ''Are Security Council resolutions to be honored and enforced or cast aside without consequences? Will the United Nations serve the purpose of its founding or will it be irrelevant?''

The only adequate response to those questions is forceful and unequivocal action by the United Nations to require that Iraq immediately comply with the terms of the 1991 ceasefire and subsequent UN requirements, beginning with the complete elimination of weapons of mass destruction. These demands are not onerous or outrageous. They simply require that Iraq abide by the same standards of human decency that guide every civilized nation. To demand less would be to abandon millions of innocent people within Iraq and to endanger millions more throughout the rest of the world.

It would also set the precedent that the malignant whims of a determined dictator can reduce the United Nations to a hollow debating society that cannot uphold the promise of world peace.

A war against Iraq by a renewed international coalition or by the United States alone would be a grave and sobering step with many risks and unknowns. We cannot and should not take such a step without full consideration by the United Nations and the Congress, as the President has promised. But the dangers of continued inaction, of endless dithering, are too frightening to ignore. We must act to support the President.

## SARASOTA CONCERT BAND

### HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. DAVIS of Florida. Mr. Speaker, the victims of the September 11, 2001 attack on the United States of America were honored by a special performance of Charles Gabriele's ''Ave Maria'' presented by the Sarasota Concert Band, conducted by its director Maestro William Barbenera, at the band's September 2nd concert. Lorraine Murphy-Renfroe and Douglas Renfroe were the solo vocalists.

Members of the band who performed in the tribute were: Patricia Dominowski, Adrienne Clover, Kelly Hatin, Valerie McManus, Lindsey White, Tom Hughes, Kelly Jacobs, Jave Martin, Pan Winkle, Phil Hohman, Estella Lilly, Maria Herrera, Calvin Wright, Megan Jefferds, Harry Phillips, Lynn Miller, R.C. Summers, George McLain, Marc Levensen, Kristen Constantino, Liz Jefferds, Joe Martinez, Dick Thierry, Gerry Snyder, John Hietala, Dave Jacobs, Jacob Bradley, Robert Moore, Merril Wilson, Eric Vanzytveld, Andrea Hatin, Robert Thurston, Marvin Luckett, Charles Wilson, Bill Namack, John Haswell, Lara Fetzek, Chuck Evans, Laurita Noller, Pam Winkle, Robert Andrews, Jack Brokensha, Mike Dubi, Carolyn Gallmeyer, Fred Gallmeyer, Jeff Hanscom, Joe Hruby, Ann Jefferds, Marc Levensen, Faye Luckett, William Namack, Eddie Pawl, Bryson Sanders, Dianne Saunders, Michael Saunders, Paul Worrell, Lisa Barbanera, Kim Clark, Diane Jolly and Melissa Martinez.

Mr. Speaker, I ask that my colleagues join me in applauding this most commendable musical tribute to the victims.

## IN HONOR OF JACQUELINE ELLAM AUTRY, RECIPIENT OF THE HONORARY CONGRESSIONAL HORIZON AWARD

### HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. SCHIFF. Mr. Speaker, I rise today to congratulate Jacqueline Autry, who will receive the Honorary Congressional Horizon Award on September 27, 2002 at the Autry Museum of Western Heritage. The Honorary Congressional Horizon Award is presented annually to individuals who have personally contributed to expanding the opportunities for all Americans, and who have set an exceptional example for young people through their successes in life.

Success has always followed Jackie Autry. As a young woman in 1959, she started her career at Security First National Bank, working first as a switchboard operator, then as an Assistant Manager of Operations, and then Manager. At the young age of thirty-two, she was appointed to the position of Vice President, where she remained until July 17, 1981, when she married the American cowboy legend, Gene Autry.

Mrs. Autry has clearly demonstrated her selfless devotion to the community of Los Angeles. Her invaluable contributions to the community include serving as President of the Palm Springs chapter of the American Red Cross and serving as Treasurer and a member of the Board of Trustees of the Eisenhower Medical Center and Hospital. She has also served as President of Community Blood Bank of the Desert and currently serves as Director and President of the Autry Foundation.

Mrs. Autry also has the venerable distinction of being the only woman ever to serve on the Major League Baseball Executive Council and Board of Directors. She continues to serve the sporting community while acting as Honorary President of the American League of Major League Baseball.

Over the years, Mrs. Autry's remarkable breadth of involvement with the community has been a benefit and an inspiration to many. I am proud to honor the contributions of Mrs. Autry. It is through her accomplishments that we are inspired to believe in the power of each American to make a difference in our nation. In acknowledgement of her service, I ask all Members of Congress to join me in recognizing the achievements and contributions of Jacqueline Autry.

## IDAHO PUBLIC LANDS

### HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. SIMPSON. Mr. Speaker, the people of Idaho are fortunate to have the incredible resources of the public lands for work and play. Our public lands provide forest, mineral, and grazing resources, as well as access to a wide variety of outdoor recreation pursuits. The beauty of Idaho's mountains and rivers draw thousands of tourists to our state, injecting millions of dollars into our state's economy and supporting thousands of small businesses. So it is fitting to draw attention to an expedition that recently passed through Idaho.

American Frontiers: A Public Lands Journey is drawing attention to America's public lands legacy through a two month, 3,000 mile journey entirely on public lands and waters. Two teams of adventurers, including teachers, a firefighter, a nurse, a reporter, and several outdoor enthusiasts began this trek on August 1, one team starting from the Canadian border, the other from the Mexican border. The two teams will join together on September 28, 2002 in Salt Lake City on National Public Lands Day. The northern group journeyed into Idaho while they were on the Continental Divide Trail, and hit the halfway point in their journey in the Targhee National Forest.

We all treasure the special moments spent in awe of the natural wonders around us, and stand to gain from a better understanding of America's public lands legacy. My thanks go to the Public Lands Interpretive Association and the many sponsors and partners organizing this special journey. I encourage you to read more about this incredible journey on America's public lands by visiting the interactive website www.americanfrontiers.net.

## REPRESSION OF MINORITIES CONTINUES IN INDIA—SIKHS, MUSLIMS, CHRISTIANS CONTINUE TO BE TARGETED

### HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. BURTON of Indiana. Mr. Speaker, I am distressed about two recent articles that show the continuing repression of minorities in India. One article appeared in The Hindu, an Indian newspaper. It said that over 5,000 Muslims were killed in the violence this spring in Gujarat. Then the Times of India reported that a group of Indian police officers fired on a group of peaceful Sikh protestors. These articles show that minorities such as Sikhs, Christians, Muslims, and others continue to suffer the worst kind of repression in ''democratic'' India.

In Gujarat, the police were quoted as saying that they were ordered to stand aside and let the Muslims be killed. This was strangely reminiscent of the 1984 massacre of Sikhs in Delhi. It is part of India's pattern of repression of its minorities. Now, it comes out that peaceful Sikh protestors who were simply holding a peaceful protest against what they see as desecration of their gurus and their scriptures were fired upon by Indian police. What kind of a democracy fires on peaceful protestors engaged in peaceful action?

Christians continue to be oppressed as well. Churches have been burned, prayer halls have been attacked, nuns have been raped, and priests have been murdered. Militant Hindu nationalists burned a missionary and his two young sons to death while they slept in their jeep. A few years ago, police fired on a Christian religious festival that was peacefully promoting the theme ''Jesus Is the Answer.''

Mr. Speaker, it is time to stop U.S. aid to India. It is time to declare our support for self-determination for the Sikhs of Khalistan, the Muslims of Kashmir, the Christians of Nagaland, and all the peoples demanding their freedom from India. We cannot just stand by and allow India's repression to go on with our support. Self-determination is everyone's birthright. Freedom is everyone's birthright. It is time for America to follow our principles and support it.

The Council of Khalistan issued an excellent press release on the police firing at the peaceful demonstrators. I would like to insert that into the RECORD at this time. In addition, I would like to place the article from The Hindu into the RECORD to show my colleagues the ongoing repression of minorities in supposedly democratic India.

INDIAN POLICE FIRE AT PEACEFUL SIKH PROTESTORS

INDIA AGAIN SHOWS IT IS NOT A DEMOCRACY

WASHINGTON, DC, August 5, 2002.—The Times of India reported on August 1 that police in Malout fired on a crowd of peaceful

protestors, injuring many of them. Several have been admitted to Civil Hospital, Malout. Eight protestors were arrested. The police used tear gas on the demonstrators. Two people suffered bullet wounds, according to the article.

The demonstrators were protesting against a so-called religious function organized by the Divya Jyoti Jagriti Sansthan which was aimed at undermining the Sikh religion and slandering the Sikh gurus, according to the Times of India.

''Like the attack on the Golden Temple, this incident shows that there is no place in India for Sikhs,'' said Dr. Gurmit Singh Aulakh, President of the Council of Khalistan. Khalistan is the Sikh homeland declared independent on October 7, 1987. ''The Indian government is dedicated to wiping out the Sikh religion,'' he said. ''Nations that do not have political power perish. The only way to ensure that the Sikh religion can survive is to liberate Khalistan as soon as possible,'' he said.

''This attack shows that India is not a democracy, despite its pretensions,'' said Dr. Aulakh. ''Democracies don't attack minorities and minority religions. Democracies don't commit genocide.''

Indian security forces have murdered over 250,000 Sikhs since 1984, according to figures compiled by the Punjab State Magistracy and human-rights organizations. These figures were published in the book ''The Politics of Genocide'' by Inderjit Singh Jaijee. India has also killed over 200,000 Christians in Nagaland since 1947, over 80,000 Kashmiris since 1988, and tens of thousands of other minorities.

A report issued last year by the Movement Against State Repression (MASR) shows that India admitted that it held 52,268 political prisoners under the repressive ''Terrorist and Disruptive Activities Act'' (TADA) even though it expired in 1995. Many have been in illegal custody since 1984. There has been no list published of those who were acquitted under TADA and those who are still rotting in Indian jails. Additionally, according to Amnesty International, there are tens of thousands of other minorities being held as political prisoners. On February 28, 42 Members of the U.S. Congress from both parties wrote to President Bush to urge him to work for the release of Sikh political prisoners. The MASR report quotes the Punjab Civil Magistracy as writing ''if we add up the figures of the last few years the number of innocent persons killed would run into lakhs [hundreds of thousands.]''

In November 1994, the Indian newspaper Hitavada reported that the Indian government paid the late governor of Punjab, Surendra Nath, $1.5 billion to organize and support covert terrorist activity in Punjab, Khalistan, and in neighboring Kashmir. The book ''Soft Target'', written by Canadian journalists Brian McAndrew and Zuhair Kashmeri, shows that the Indian government blew up its own airliner in 1985 to blame Sikhs and justify further repression. It quotes an agent of the Canadian Security Investigation Service (CSIS) as saying, ''If you really want to clear up the incidents quickly, take vans down to the Indian High Commission and the consulates in Toronto and Vancouver. We know it and they know it that they are involved.'' On January 2, the Washington Times reported that India sponsors cross-border terrorism in the Pakistani province of Sindh.

Christians have been victims of a campaign of terror that has been going on since Christmas 1998. Churches have been burned, Christian schools and prayer halls have been attacked, nuns have been raped, and priests have been killed. Missionary Graham Staines and his two sons were burned alive while they slept in their jeep by militant Hindu members of the RSS, the parent organization of the ruling BJP. Earlier this year, over 5,000 Muslims were murdered by Hindus in Gujarat, according to The Hindu. These attacks were planned by the government, according to human-rights organizations, and news reports quoted a police officer as saying they had orders not to intervene to stop the violence.

''India's efforts to eliminate the Sikh religion are doomed to fail,'' Dr. Aulakh said. ''This terrible act of police brutality shows that India is neither secular nor democratic, and it is time to launch a Shantmai Morcha to liberate our homeland, Khalistan, so that the Sikh Nation can finally enjoy the glow of freedom that was promised to us in 1947. Sovereignty is our birthright, and self-determination is the cornerstone of democracy. It is time for self-determination for all the peoples of South Asia.''

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[From the Hindu, April 16, 2002]

GUJARAT RIOT TOLL COULD BE UP TO 5,000

JAIPUR, April 15.—Various social and political groups and human rights organizations, which held a public meeting here over the week-end to protest against the recent violence in Gujarat, demanded removal of the Narendra Modi Government and spoke out against the move to hold elections to the State Assembly prior to the return of normalcy.

The meeting addressed by K.S. Subramanyam, former Director-General of Police, Tripura; Magsaysay Award winner, Aruna Roy; noted economist, Prabhat Patnaik; Renuka Khanna, PUCL Activist from Baroda in Gujarat and others, asked for immediate steps to restore people's faith in the system in the riot-ravaged Gujarat.

Presenting the report of a delegation comprising prominent citizens who toured the affected areas of Gujarat, Mr. Subramanyam, who was a member of the delegation, said the police in Gujarat had extended a helping hand to the rioters on the instructions of the Chief Minister, Narendra Modi.

The official records speak of over 700 casualties in Gujarat riots but they had learnt that the number of those killed could be between 2,000 and 5,000, he observed. ''Senior administrative as well as police officers confided with us that in a meeting with the officials called on the eve of the VHP-announced bandh of February 28, Mr. Modi had asked them to honour Hindu sentiments''. This directive made the officers passive spectators to what went on in Gujarat on the day of bandh and thereafter, Mr. Subramanyam said.

He also said the delegation could see that the Godhra carnage itself was not the result of any pre-planned strategy but the outcome of a tussle between the Kar Sevaks in the train and the people living in the slum clusters near the railway station. Ms. Renuka Khanna said the police colluding with the rioters to wreak havoc with the lives and property of the minority community, would only lead to the birth of terrorism.

Ms. Aruna Roy said it was for villagers to preserve the pluralistic culture of India's rural areas and stop trouble-makers from disturbing the social fabric.

Prof. Patnaik traced the roots of the social and communal unrest to the growing unemployment and poverty in the wake of globalisation.

The meeting, which held the Gujarat Government, its police and administration fully responsible for the killings in that State, also found them guilty of discriminating against the victims and their families later, as well by denying them relief and compensation. By giving a clean chit to Mr. Modi, the National Democratic Alliance Government at the Centre too shared the guilt of the genocide in Gujarat, the meeting noted.

## TRIBUTE TO JIM AMOS FOR YEARS OF SERVICE

### HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. CUNNINGHAM. Mr. Speaker, I rise today to recognize Jim Amos for his contributions to the San Diego community. Jim retired this month as President and CEO of Mail Boxes Etc., Inc., which is headquartered in my district.

Jim's professional accomplishments are indeed laudable. What I want to recognize today, however, is the mark Jim has left on San Diego through his commitment to philanthropy.

In 1998, Jim founded the MBE We Deliver Dreams Foundation, a non-profit organization committed to improving the lives of children who are victims of abuse, neglect, poverty, violence or illness.

The MBE Foundation has grown rapidly since its founding, and in that time has delivered numerous dreams to children throughout the world. I am particularly grateful for the Foundation's Community Care Fund; a separate fund dedicated to making dreams come true for San Diego youth.

Jim may be departing the San Diego community, but he is leaving an indelible impression upon it, and for that I thank him. I urge my colleagues to join me in recognizing Jim's commitment to charity and his success with the MBE Foundation, both of which serve as examples to us all.

## IN RECOGNITION OF JEFF LUDWIG, SENIOR VICE PRESIDENT OF NAI MICHAEL COS.

### HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HOYER. Mr. Speaker, I rise today to give recognition to Mr. Jeff Ludwig, senior vice president of Nai Michael Cos. As a result of his personal initiative to become a community emergency response team member, Mr. Ludwig was able to assist the community of La Plata, Maryland in constructing a new Town Center after it was hit by a powerful tornado in April 2002. After President Bush's State of the Union Address in January, Mr. Ludwig responded to the President's call to volunteerism by signing up for the Citizen Corps to become a member of the new emergency response group. He took advantage of online training manuals and completed his course, despite the fact that the Homeland Security Program had not yet begun to train citizen volunteers. This motivation prepared him to assist his community on April 28. It also makes him one of the first citizens corps community emergency response team leaders to take actions in the Nation's history.

When the tornado struck La Plata, Mr. Ludwig teamed up with the Facchina Group to

create a plan to build a temporary Town Center. Not only did he help initiate this plan, he put in 18 hour days on the construction site, attacking problems, maintaining worker morale, and even buying dinner for the crew. The project was completed in eight days under his strong leadership. Mr. Ludwig's votunteerism is a strong symbol of the impact dedicated Americans can have on their communities in times of crisis.

Mr. Speaker, and colleagues, please join me in thanking Jeff Ludwig for his commitment to his community and congratulating him on his tremendous successes.

## TRIBUTE TO ROBERT J. SPAZZARINI OF HUNTSVILLE, ALABAMA

### HON. ROBERT E. (BUD) CRAMER, JR.

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. CRAMER. Mr. Speaker, I rise today to recognize Mr. Robert J. Spazzarini of Huntsville, Alabama as he celebrates his retirement from thirty six years in the Legal Office of the United States Army Aviation and Missile Command at Redstone Arsenal, Alabama.

Robert Spazzarini first came to Redstone Arsenal in 1966 as a contract attorney. He served in various positions in this office and was appointed to the Senior Executive Service and named Chief Counsel in February 1997. He has a reputation of providing excellent legal services, which were demonstrated when he successfully led the consolidation of two legal offices into one AMCOM after the 1995 Base Realignment and Closure.

Mr. Spazzarini has been the recipient of numerous awards for his outstanding service to AMCOM including being named a Fellow, National Institute of Public Affairs. He was the first recipient of the Francis J. Buckley Managerial Award presented annually by the Command Counsel, U.S. Army Materiel Command. In addition to these specific awards, Mr. Spazzarini has been honored with the respect of his staff, peers, and the Command's leadership due to his expertise, professionalism, and high standards of leadership.

Though the people at Redstone Arsenal and in the Huntsville community will miss Mr. Spazzarini's exceptional legal services, I Join his colleagues, family and friends today in wishing him the best in retirement and a well-deserved rest.

## IN MEMORIUM OF BOB HAYES,

### HON. CORRINE BROWN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Ms. BROWN of Florida. Mr. Speaker, it is with sorrow that I announce the passing of my friend, Bob Hayes, at the age of 59.

''Bullet'' Bob, a Jacksonville native, was known as the world's fastest man for his efforts in the 1964 Tokyo Olympics. In addition to winning the gold medal in the hundred-meter race, tying the world-record of 10.05 seconds, he also anchored the 400-meter relay team to victory with a time of 8.6. Not a bad day's work for the then Florida A&M junior.

For many athletes, the Olympics would be the culmination of an athletic career, but Hayes, switching sports to football and recruited by the Cowboys (after finishing up with the Rattlers), went on to redefine how football is played. In his rookie year, Bullet had 1,003 yards and 12 touchdowns, and his speed forced opposing teams to come up with zone defenses now common in pro play.

In 1972, when Dallas won the Super Bowl, Hayes became the only athlete to earn a Super Bowl ring and an Olympic gold medal. He retired in 1975 having made 9 consecutive playoff appearances, 3 Pro Bowl showings, two Super Bowl appearances, and earning a Cowboys receiving record of 371 catches for 7,414 yards with 71 touchdowns.

Hayes did not forget his roots, and returned home to Jacksonville. He remained active in the Bob Hayes Invitational Track and Field Meet, now in its 38th year. At the Bob Hayes Invitational in Jacksonville, 3500 high school and middle school athletes gain experience in competing on a national level against world class competition. He also attended as many Florida A&M games as he possibly could.

Just last year Hayes was the 11th inductee to the prestigious Dallas Cowboys' Ring of Honor. And, earlier this year, he received the Lifetime Achievement Award at the Seventh Annual Florida Sports Awards.

Bob ''Bullet'' Hayes died last Wednesday. He is survived by his mother, a brother and a sister, and five children.

I also submit the following article from the September 20th issue of the Gainesville Sun into the RECORD.

[From the Gainesville Sun, Sept. 20, 2002]

JACKSON REMEMBERS HAYES

Bob Hayes' speed made a difference for blacks during the tumultuous 1960s, the Rev. Jesse Jackson said Thursday.

''He was such a lift for our generation,'' said Jackson, who played football against Hayes and the powerful Florida A&M teams of the early 1960s. ''He was the best in the whole world at what he did.''

Jackson's North Carolina A&T team was just one of many schools routed on an annual basis by Hayes and the Rattlers.

''You couldn't catch him. No one could,'' he said. ''The fact is nobody could catch Bob Hayes in the whole world.''

## HONORING THE ACCOMPLISHMENTS OF MARC NATHANSON AS CHAIRMAN OF THE BROADCASTING BOARD OF GOVERNORS

### HON. HOWARD L. BERMAN

OF CALIFORNIA

### HON. RICHARD A. GEPHARDT

OF MISSOURI

### HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. BERMAN. Mr. Speaker, on the occasion of his retirement from the Broadcasting Board of Governors, it is a pleasure to recognize Marc Nathanson, who was named to the Board in 1995 and has served as its Chairman since 1999. Marc is a very dear friend to us; a person of the highest integrity and intelligence and it is with considerable pride that we share with our colleagues some of the many challenges he faced during his tenure and the outstanding manner in which he has served.

Marc led the BBG through its transition to independence in the Fall of 1999, ensuring the appropriate distribution of resources and authorities as the responsibilities of the U.S. Information Agency were divided between the new broadcasting entity and the State Department.

He set the standard for cooperative relationships between the State Department and the White House in a manner that protected the journalistic independence of the broadcasters, yet supported the new agency's ability to carry out its mission to present the policies of the United States clearly and effectively.

Marc chaired the Board during strong tests of its legislated role as a firewall—both in ensuring that the broadcast entities acted according to strong journalistic standards and principles, and ensuring that the broadcasters were protected from unwarranted interference from the State Department.

He led the Board through periods of foreign policy crisis, where the BBG's ability to surge its broadcasting to meet foreign policy priorities was severely tested. For example, during the crisis in the Balkans, the BBG established the ''Ring Around Serbia''—a series of transmitters quickly established to allow the people of the region to have accurate news and information about the war around them, and of the crimes being committed against civilian populations. The success of this effort was evident when Radio Free Europe/Radio Liberty was named the most popular radio station in the region at the height of the crisis.

He faced the challenge of terrorism, and ensured that the BBG was a strong part of the war on terrorism as the agency's broadcasts surged in the Dari and Pashto languages to Afghanistan and other parts of the Middle East and South Asia.

Marc challenged the agency to confront the need for new broadcast activities in this region where news and information is either government controlled or unavailable. He chaired the Board as it created the agency's new Middle East Radio Network (''Radio Sawa''), putting U.S. international broadcasting high in the ratings among young Arab audiences throughout the Middle East.

He helped lead the agency into the 21st Century by stressing the use of new technologies and the need to provide programming targeted at key audiences. He emphasized the need for more effective research, both to evaluate current programming and to lay the foundation for new programming, allowing the agency to more efficiently use its limited resources.

He shared a vision with other BBG members for enhanced television programming worldwide—and especially to Islamic audiences—encouraging the consideration of opportunities for television broadcasting to the Middle East.

Mr. Speaker, we invite our colleagues to join us in congratulating Marc Nathanson for his many accomplishments as head of the Broadcasting Board of Governors and to thank him for giving so freely of his time and expertise to help deliver America's message abroad.

## PROJECT ROFEH RECOGNIZES LEADERS

### HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. FRANK. Mr. Speaker, for several years I have had the very distinct honor of sharing with our colleagues information about the important charitable work done by ROFEH International and the New England Chassidic Center. Under the leadership of Grand Rabbi Levi Y. Horowitz, the New England Chassidic Center and ROFEH International do an excellent job of helping people take full advantage of the wonderful medical facilities we have in Boston. Through their efforts, families are able to come to Boston when members of those families need medical care, and find their needs tended to so that they can focus on the important job of being supportive of that individual in need of medical care. I am very proud that this innovative program that does so much for people at a time of their-greatest need is headquartered in the district I am privileged to represent, and I am pleased to put here into the RECORD of our proceedings a list of those individuals who are receiving awards from ROFEH at a November 10 dinner, in the hopes that this will inspire people elsewhere in the country to emulate this creative work.

Mr. Speaker, here is the list of the award winners and a brief description of their efforts which does not do full justice to them, but does give some indication of how important they have been to ROFEH's vital work.

Dr. Eugene Braunwald is the Distinguished Hersey Professor of Medicine at Harvard Medical School, Faculty Dean and Chief Academic Officer of the Partners HealthCare System founded by the Brigham and Women's and Massachusetts General Hospitals. He is the only cardiologist who is a member of the National Academy of Sciences. In 2000 the living Nobel Prize winners in medicine voted Dr. Braunwald as ''the person who has contributed the most to cardiology in recent years''. The doctor is a Holocaust survivor. Dr. Eugene Braunwald, will receive the coveted ''Lillian and Harry Andler Memorial Award''.

Mr. and Mrs. Joseph Gann in recognition of their devotion to ROFEH International will have the newly renovated ROFEH International facility named in their honor, ''The Joseph and Rae Gann ROFEH International Residence Facility''. Mr. and Mrs. Gann have been affiliated with the Bostoner Rebbe, Grand Rabbi Levi Y. Horowitz for over 50 years and they continue to be strong supporters of ROFEH International.

Others to be bestowed with special laudatory communal awards are Mr. Irwin Chafetz and Mr. A. Joseph Stern.

Mr. Irwin Chafetz is the director of Interface Group-Massachusetts, Inc., a privately held company that owns and operates GWV International.

He has been instrumental in the development of ROFEH International and the renovation of its residential facility for the benefit of the families and the desperately ill, who come to Boston for medical help.

Mr. Chafetz received a Boston University Distinguished Alumni Award in 2000, and was honored by the Massachusetts Anti-Defamation League in 2001. He is a member of the executive board of the American Israel Public Affairs Committee (AIPAC) and is an active participant at Chabad House of Lexington.

Mr. Chafetz grew up in Dorchester, Massachusetts. He lives in Brookline with Roberta his wife. They have two sons and four grandchildren.

Mr. A. Joseph Stern is a developer of residential and commercial construction. Mr. Stern's list of accomplishments as a builder of community needs is truly impressive. Despite his busy schedule, he has devoted and continues to devote substantial amounts of time, effort and material resources to a host of worthy causes.

Mr. Stern has a long family connection with the Bostoner Rebbe, Shlita. Recently he has been most helpful in the Rebbe's effort to reconstruct the ROFEH International building, making it possible to house the desperately ill and their families.

Mr. Stern continues to live up to his reputation as a builder of Torah and Chesed. He credits his accomplishments to the traditions handed down by his parents and grandparents.

Mr. Irwin Chafetz and Mrs. A. Joseph Stern will be presented with the ROFEH International Master Builders Award.

## TRIBUTE TO WALLY LAIRD

### HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. VISCLOSKY. Mr. Speaker, it is my distinct honor to commend one of Northwest Indiana's most distinguished citizens, Wally Laird, of Rensselaer, Indiana. On Friday, September 27, 2002, he will be honored for his exemplary and dedicated service to our community. Wally's praiseworthy efforts will be recognized at a special Rensselaer/Remington Area Chamber of Commerce dinner, as an endowment for a scholarship has been established in his name.

The scholarship, the Wally Laird Youth Service Award, was created to honor a high school student who shows similar qualities to Mr. Laird. These qualities include dedication to community causes and commitment to education, as well as possessing the willingness to share the knowledge he or she gains with others. This banquet and scholarship is in honor of Wally Laird's service as well as his demonstrated commitment to improving the communities of Northwest Indiana.

Wally Laird, a longtime resident of Rensselaer, graduated from Rensselaer High School in 1950 and went on to Purdue University to earn his bachelor's and master's degrees in agricultural economics. A local farmer and entrepreneur, Wally Laird is most widely known by radio-listeners as the host of WRIN/WLGI's ''Farm World.'' Aside from farming and his radio work, Wally is an active Rotarian and gives much of his time to the Carnegie Players theater group. Additionally, he has been working, with others in the agricultural community to bring an ethanol-producing facility to Jasper County, Indiana.

The featured speaker at this dinner will be WGN Radio personality Max Armstrong. Armstrong is one of America's best-known and widely followed agriculture journalists. His daily broadcasts, with colleague Orion Samuelson. have been heard by millions of Americans across the United States for nearly 25 years. Armstrong has spent the past two decades delivering the news about agriculture to his vast farming audience, as well as the nonfarm consumers in the Chicago area. Armstrong has been the recipient of numerous awards of excellence in journalism.

Mr. Speaker, I ask you and my other distinguished colleagues to join me commending Wally Laird for his outstanding service to Rensselaer and neighboring Northwest Indiana communities. His family and friends should be proud of his efforts, as his leadership has served as a beacon of hope throughout the area. Wally Laird's longstanding commitment to improving the quality of life for the people of Northwest Indiana is truly inspirational and should be recognized and commended.

## TRIBUTE TO THE REVEREND DR. DAVID PAUL NEELY

### HON. ROBERT A. BRADY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. BRADY of Pennsylvania. Mr. Speaker, I rise to honor and congratulate The Reverend Dr. David Paul Neely, Sr., Pastor of Greater Harvest Baptist Church, on the celebration of the anniversary of his 64 years in the ministry commemorating on September 27, 2002. After serving a number of churches throughout the country, Rev. Neely founded the Greater Harvest Baptist Church in 1968. For over 33 years he has Preached the Gospel from the pulpit of this house of worship located in my Congressional District.

The Reverend Dr. D. P. Neely was born on May 10, 1922 in Smyrna, South Carolina, to the late Reverend Dr. C. S. Neely and Dora Sanders-Neely. He was the fourteenth of sixteen children and received his primary education in the Smyma, South Carolina public school system. He completed his secondary education at the Jefferson High School in York, South Carolina. At the age of sixteen, Rev. Neely was called to preach the gospel and was ordained six months later by the late Reverend Dr. H. Gray. as Reverend Dr. Neely continued to grow in Christianity, he enrolled in the Hanover Theological Seminary and later in the Martha's Vineyard Theological Seminary. He is the recipient of two Doctor of Divinity Degrees received in 1950 and 1997 respectively.

Reverend Neely is one of four family members to be ordained to minister, preach, and teach the Word of God. They include his father the Reverend Dr. C.S. Neely, his brother The Reverend J. O. Neely, both of whom are deceased, and his youngest son, the Reverend S. D. Neely, Sr., currently Pastor of the Enon Baptist Church of Philadelphia.

In 1941 Reverend Neely enlisted in the United States Airforce. He received an Honorable Discharge in 1946. As before, during and after his military service, Reverend Neely continued to preach the Word of God and maintain his profession as a Barber. In 1955 Reverend Neely moved to Philadelphia, Pennsylvania and joined the Oakgrove Baptist Church. He later met and married Ms. Cleveland Ann Jowers-Neely.

During Reverend Neely's sixty-four years of preaching, he has served numerous congregations including Mount Pisgah in Dallas, North Carolina; First Baptist Church, Mooresville, North Carolina; Trinity Baptist Church, Boston, Massachusetts; Friendship Baptist Church, Peoria, Illinois. On the third Sunday in September, 1968, Reverend Dr. Neely became the founder of The Greater Harvest Baptist Church of Philadelphia. The church was originally located at Sixteenth and Oxford Streets. However, due to a growing membership it only remained at this location for one year. It was then moved to its second home at Broad and Clearfield Streets and the membership continued to grow. Its final home is its current location, 1409–17 West Master Street where it continues to stand as a strong foundation to our Lord and Savior Jesus Christ.

While Reverend Neely's first love remains Jesus Christ, he has great esteem for his profession of over forty years, being a Licensed Barber. Reverend Neely's long time hobby is that of Deep Sea Fisherman. His affiliations include membership in The National Baptist Convention of U.S.A., Inc., The Philadelphia Police Clergy, The Philadelphia Prince Hall Masons, Pennsylvania State Convention, Ministers Conference of Philadelphia, and the Good Friday Night Baptist Association.

Mr. Speaker, houses of worship and those that lead them continue to be the backbone of our communities. Reverend Dr. Neely having labored and nurtured in the vineyard for sixty-four years has come to epitomize those values that remain inherent in the strength an character of our citizenry. I hope that my colleagues will join me in recognizing and celebrating the anniversary of The Reverend Dr. D. P. Neely's sixty-four years in the ministry.

## HOMELAND EMERGENCY RESPONDERS ORGANIZATION (HERO) ACT

### HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to introduce the HERO Act, the Homeland Emergency Responders Organization Act.

This Act will establish the Office of National Preparedness within the Federal Emergency Management Agency. The HERO Act will improve the ability of first responders to prepare for and respond to terrorist attacks by getting grants to them directly through this new Office.

In the past several months, I've received numerous letters and calls from state and community leaders on the critical issue of homeland security. Two overriding themes have surfaced again and again:

We must allocate more resources to homeland security.

And, those resources must go directly to cities and other local governments.

I believe that the best ideas on how to make the hometown more secure come from the hometown.

The HERO Act is a federal grant program that will improve the readiness of first responders at both the local and state levels. Since it utilizes an existing agency—FEMA—and its regional offices, federal grants will get to those who need them most, when they need them most—NOW!

The Director of the new Office will make grants available to first responders through each of FEMA's 10 regional offices. Each of these regional offices serves several states, as well as Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana's. Eligibility for grants will be based on criteria such as population density and proximity to international borders.

Dispersing funds directly to first responders, like the Broward County Sheriff's Office or the Hollywood, Florida Police Department, will enable local communities to concentrate on their highest priorities—training, purchasing communications equipment, or upgrading emergency operating centers.

The new Office will also distribute grants to each of the 50 states. The state grants can be used—to establish or upgrade state-wide emergency notification systems, plan terrorism response exercises, or to coordinate inter- and intra-state antiterrorism programs.

First responders in cities and towns across America need our help to make the homeland more secure. They, in fact we, can't wait for a new agency to be approved, and then created, before we take the first steps towards a more secure homeland. Local communities need our help and support now.

I am looking forward to working with my colleagues on both sides of the aisle to move this bill as quickly as possible. Time is of the essence. Let's make the homeland more secure.

## PAYING TRIBUTE TO JANE ZIMMERMAN

### HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. McINNIS. Mr. Speaker, it is my pleasure to recognize Ms. Jane Zimmerman of Durango, Colorado for her tireless dedication and the irreplaceable contributions she has made to her community. Ms. Zimmerman has served in the Durango Area Chamber Resort Association for over 19 years, overseeing a variety of community projects and activities that have immeasurably benefited the City of Durango. As she leaves her position of Executive Director, I would like to highlight her accomplishments before this body of Congress and this nation.

Since beginning her career at the Chamber in 1983, Ms. Zimmerman has held a variety of leadership positions that have utilized her knowledge and expertise toward worthy causes. She has directed the Durango Area Chamber Resort Association through a multiplicity of challenges and transitional periods. Under Ms. Zimmerman's watchful eye, the Durango Chamber of Commerce became the Durango Area Chamber Resort Association, DACRA, the transition was a new and shaky venture for the city but Ms. Zimmerman lead the organization through this uncertain period and into financial stability and success.

Ms. Zimmerman has also been instrumental in many other projects that have benefited the community. Through increased communication and coordination efforts, she has helped to bridge relationships between the business and education communities, providing valuable revenue for Durango's educational programs. Ms. Zimmerman organized and directed a High School Leadership program that today boasts the active involvement of students from all three high schools in La Plata County.

Over the summer, Ms. Zimmerman dedicated much of her time to forming the new La Plata County Disaster Recovery Coalition, helping to aid distressed victims of Colorado's forest fires. Ms. Zimmerman met with over 100 interested parties and formed the coalition to provide a proactive approach to aiding fire victims with badly needed supplies and shelter.

Mr. Speaker, it is a honor and a privilege to recognize Ms. Jane Zimmerman before this body of Congress and this nation for the countless contributions she has made to Durango. She is truly an irreplaceable asset to the welfare and vitality of the entire community, and I commend her for the hardwork and determination she has given to such a reputable and worthwhile pursuit. Thanks for your service Jane and I wish you all the best in your future endeavors.

## IN MEMORY OF KATE GILL MARRIOTT MADGWICK

### HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HALL of Texas. Mr. Speaker, I rise today to honor the memory of Kate Gill Madgwick of Terrell, Texas, the loving wife of Terrell Mayor Henry Madgwick and an outstanding citizen, who passed away in December of last year.

Born and raised in Terrell, Kate graduated from Terrell High School and attended the University of Texas, where she earned a degree in English Literature. Upon receiving her degree, she chose to serve her country during World War II as an aide to the American Red Cross in England. After returning to Terrell, she remained active in the community through her membership in the Episcopal Church of the Good Shepherd.

She was a devoted wife, mother and grandmother and is survived by her husband, Henry; son Bruce Ragan Sanders of Denver; daughter Susan Sanders McCrum of Dallas; grandchildren Cole and Kelly McCrum; and in-laws Doris and Peter Gibbs of England. She was preceded in death by her previous husband of 40 years, Albert James Sanders of Tiverton, England.

All who knew Kate will miss her dearly, and she will certainly be remembered by those whose many lives she touched in Terrell. As we adjourn today, let us do so in memory of this outstanding citizen and my good friend—Kate Madgwick.

## POST-HUSSEIN IRAQ

### HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. ISRAEL. Mr. Speaker, as we begin to discuss our options in Iraq it is important that we recognize the difficulties of a post-Hussein Iraq. I commend Thomas Friedman's column

of September 1, 2002 to my colleagues, which I ask to have inserted into the RECORD.

''As I think about President Bush's plans to take out Saddam Hussein and rebuild Iraq into a democracy, one question gnaws at me: Is Iraq the way it is today because Saddam Hussein is the way he is? Or is Saddam Hussein the way he is because Iraq is the way it is?

''I mean, is Iraq a totalitarian dictatorship under a cruel, iron-fisted man because the country is actually an Arab Yugoslavia—a highly tribalized, artificial state, drawn up by the British, consisting of Shiites in the south, Kurds in the north and Sunnis in the center—whose historical ethnic rivalries can be managed only by a Saddam-like figure?

''Or, has Iraq, by now, congealed into a real nation? And once the cruel fist of Saddam is replaced by a more enlightened leadership, Iraq's talented, educated people will slowly produce a federal democracy.

''The answer is critical, because any U.S. invasion of Iraq will leave the U.S. responsible for nation-building there. Invade Iraq and we own Iraq. And once we own it, we will have to rebuild it, and since that is a huge task, we need to understand what kind of raw material we'll be working with.

''It is instructive in this regard to quickly review Iraq's history before Saddam. Romper Room it was not. It was a saga of intrigue, murder and endless coups involving the different ethnic and political factions that were thrown together inside Iraq's borders by the British. In July 1958, Iraq's King Faisal was gunned down in his courtyard by military plotters led by Brig. Abdel Karim Kassem and Col. Abdul Salam Arif. A few months later, Kassem ousted Arif for being too pro-Nasserite. Around the same time a young Saddam tried, but failed, to kill Kassem, who himself executed a slew of Iraqi Nasserites in Mosul in 1959.

''In 1963, Arif came back from exile and killed Kassem. A short time later Arif, and the Baath Party thugs around him, savagely slaughtered and tortured thousands of left-wingers and Communists all across Iraq. Arif ruled until 1966, when he was killed in a helicopter crash and was succeeded by his brother, who was toppled in 1968 by Saddam and his clan from the village of Tikrit. That's when Saddam first began sending away his opponents to a prison called Qasr al-Nahiya—'the Palace of the End.' Since 1958, every one of these Sunni-dominated military regimes in Baghdad began with a honeymoon with the Kurds in northern Iraq and ended up fighting them.

''The point here is that we are talking about nation-building from scratch. Iraq has a lot of natural resources and a decently educated population, but it has none of the civil society or rule of law roots that enabled us to quickly build democracies out of the ruins of Germany and Japan after World War II. Iraq's last leader committed to the rule of law may have been Hammurabi—the King of Babylon in the 18th century B.C. So once Saddam is gone, there will be a power vacuum, revenge killings and ethnic pulling and tugging between Kurds, Sunnis and Shiites.

''This is not a reason for not taking Saddam out. It is a reason for preparing the U.S. public for a potentially long, costly nation-building operation and for enlisting as many allies as possible to share the burden. There is no avoiding nation-building in Iraq. Because to get at Iraq's weapons of mass destruction we'll need to break the regime open, like a walnut, and then rebuild it.

''What's worrying about the Bushies is that they seem much more adept at breaking things than building things. To do nation-building you need to be something of a naïve optimist. I worry that the Bushies are way too cynical for nation-building.

''My most knowledgeable Iraqi friend tells me he is confident that the morning after any U.S. invasion, American troops would be welcomed by Iraqis, and the regime would fold quickly. It's the morning after the morning after that we have to be prepared for. In the best case, a 'nice' strongman will emerge from the Iraqi Army to preside over a gradual transition to democracy, with America receding into a supporting role. In the worst case, we crack Iraq open and it falls apart in our hands, with all its historical internal tensions—particularly between its long-ruling Sunni minority and its long-frustrated Shiite majority. In that case, George Bush will have to become Iraq's strongman—the iron fist that holds the country together, gradually redistributes the oil wealth and supervises a much longer transition to democracy.

''My Iraqi friend tells me that anyone who tells you he knows which scenario will unfold doesn't know Iraq.''

## CONGRATULATING SOUTH LOUISIANA MUSICAL PIONEERS—LUDERIN DARBONE, EDWIN DUHON AND THE HACKBERRY RAMBLERS

### HON. CHRISTOPHER JOHN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. JOHN. Mr. Speaker, I rise today to commend 2002 National Heritage Fellow Awardees—and my constituents—Luderin Darbone and Edwin Duhon, founding members of the acclaimed South Louisiana musical group, The Hackberry Ramblers.

The prestigious National Heritage Fellow Award was created in 1982 by the National Endowment for the Arts. To date, the award has honored 272 traditional artists, of all varieties, from across the United States.

My home state of Louisiana has been home to fifteen fellows since 1982, and ten of those fellows have been natives of Louisiana's 7th Congressional District, which I proudly represent. The artists or groups nominated for this award have made a ''significant contribution to the cultural heritage of the United States.''

Luderin Darbone and Edwin Duhon of The Hackberry Ramblers were among this year's thirteen awardees, and indeed have made a significant contribution to the world of Cajun music.

Mr. Darbone and Mr. Duhon have been thrilling audiences as the lead members of The Hackberry Ramblers since 1933. They began playing at local parties and dances in South Louisiana, and their ensemble is still playing and touring today—nearly 70 years later.

Undoubtedly the oldest Cajun music group in existence, the Ramblers combine their Cajun French repertoire with rural string band, western swing, and popular ingredients to produce their unique sound. A number of musical 'firsts' are attributed to The Hackberry Ramblers including being among the first Cajun musicians to de-emphasize the accordion and feature the fiddle; the first to successfully blend the Cajun music sound with western swing, blues and a variety of other medleys; the first to record and tag the name ''Jolie Blonde,'' the tune often called the 'Cajun National Anthem'; and they were the first musicians to bring electronic amplification to area dancehalls by running a sound system off the engine of Mr. Darbone's Model-A Ford.

Their 1997 album, ''Deep Water,'' received a grammy nomination in the traditional folk category, and on December 4, 1999, Darbone and Duhon fulfilled a life-long dream of performing at the Grand Ole Opry in Nashville. This past spring and summer, The Ramblers toured festivals across Louisiana and even ventured on their first European tour!

Over the years, The Ramblers have been profiled on Entertainment Tonight, Music City Tonight, and NPR's Weekend Edition. They have garnered critical acclaim from the New York Times, Rolling Stone, and USA Today—and they have even been featured on MTV!

As one report put it—''They have seen the Depression, World War II, rock and roll, flower power, disco, the computer age, and 9/11—and they're still going strong.''

Mr. Speaker, I congratulate South Louisiana's 2002 National Heritage Fellows Mr. Luderin Darbone and Mr. Edwin Duhon on their lifetime of achievement and I wish The Hackberry Ramblers many more years of good times and great music!

## HONORING LAURAN HOWARD AS AN ''ANGEL IN ADOPTION''

### HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. KNOLLENBERG. Mr. Speaker, I would like to salute Lauran Howard, who will be one of the 277 Angels in Adoption honored tonight at a banquet organized by the Congressional Coalition on Adoption Institute (CCAI).

CCAI is a nonprofit, nonpartisan organization raising awareness about the tens of thousands of foster children in this country and the millions of orphans around the world in need of permanent, safe and loving homes; and eliminating the barriers that hinder these children from realizing their basic need of a family.

I was proud to nominate Lauran because her work has made a significant difference in the lives of children and adoptive families in our community. Since graduating from Marygrove College in Detroit, MI, Howard has been actively involved in ensuring that children are placed with loving families in a timely manner. After working with the Michigan Department of Social Services (now the Family Independence Agency) as a social worker, she began working as a caseworker for the Honorable James Lincoln at the Wayne County Juvenile Court. Later, as a shareholder in the firm of Kemp, Klein, Umphrey and Endelman in Troy, MI, she concentrated her practice in the adoption and family law areas. Lauran is a member of the American Academy of Adoption Attorneys (AAAA), having practiced as counsel in hundreds of adoptions.

Since January 2, 2000, she has been a court administrator in adoptions and juvenile support for Oakland County, MI. In that position, Lauran attempts to ensure that adoptions are processed quickly and in accordance with the Michigan adoption code and court rules. Lauran's efforts have helped reduce the time that children spend in foster care and guarantee the system is used as a temporary answer instead of a permanent solution. The

swift placement of children in permanent homes is essential to their positive development and well-being.

Adoption allows people the opportunity to extend their homes and their hearts to people in need. I commend Lauran Howard for her work to break down the barriers that stand between foster children and their adoptive families. She is truly worthy of the Angels in Adoption recognition.

## RECOGNIZING THE ACHIEVEMENT OF GLORIA WISE BOYS & GIRLS CLUB

### HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. CROWLEY. Mr. Speaker, I rise in recognition of The Gloria Wise Boys & Girls Club of the Bronx, New York. I congratulate them on their recently awarded $218,500 grant from the U.S. Department of Justice.

This grant will fund the Juvenile Mentoring Program (JUMP). JUMP is a one-on-one mentoring program that takes at-risk youths from the Bronx neighborhoods of Co-Op City, Baychester, Edenwald, and Williamsbridge, and gives them the kind of activities they want and need. The goals of this program are to reduce gang participation, promote academic achievement and school attendance, and promote positive social behavior. The activities include college campus visits, outings to sporting events, and reading time with caring adult mentors.

That is precisely what is so wonderful about Gloria Wise—it recognizes the needs of this community and it provides services that serve this community. That is the mark of understanding, seasoned leadership—leadership provided by Gloria Wise's Executive Director, Charlie Rosen. Mr. Rosen has proven his commitment to the neighborhood for decades. And he continues to respond to the needs of this varied and diverse community.

Under his leadership, Gloria Wise has grown into a model community center, serving the young, the old, those in need of assistance, and those who long to help, this center serves all of us.

This Federal grant certainly speaks to the quality of Mr. Rosen's leadership. It also speaks to the quality of the Gloria Wise programs and staff, people like the Jeff Aulenbach who is the Deputy Executive Director who actually wrote the grant application—an application that was successful in a very competitive year where only three of these awards were given out in New York State.

This program has a lot of people behind it, including myself. This center has been blessed with incredible staff and an incredible leader. I am glad that the Federal Government and the Department of Justice has recognized how exceptional this Boys & Girls Club is to the Co-Op City community.

For all of their work, I thank them.

## PAYING TRIBUTE TO HOLLY COORS

### HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to an individual who has contributed selflessly to the betterment of her community, Holly H. Coors of Denver, Colorado. It is my pleasure to honor Holly as a pillar and a pioneer to the advancements of our society.

Holly Coors was born and raised in Philadelphia by a caring charitable family. She moved to Colorado where she nurtured her own family with her example of humanitarian service. Holly has donated countless hours of service at St. Luke's Hospital and Spalding Rehabilitation Hospital in Denver Colorado in addition to serving as the Colorado State Chairman for Reagan/Bush in 1980 and 1984. Holly's appointment as the United States Ambassador to the National Year of Americas by President Reagan highlights her ability to represent her country and her willingness to reach out. Holly has also helped found and fund the organization Women of Our Hemisphere Achieving Together to help women improve their lives through entrepreneurship. Through this organization and her support of Latin American schools and clinics, Holly has economically uplifted many developing communities and received numerous awards for her dedication to educational and health care issues.

Holly's humanitarian legacy extends to the Caribbean where she helped rebuild the fire ravaged Parliament House in the commonwealth of Dominica. When Hurricane Mitch wreaked havoc along its destructive path, Holly sent five plane loads of diapers to hospitals there. Appointed to serve as Ambassador-at-Large to Latin America by President George H. W. Bush, Holly moved throughout the western hemisphere standing out as a determined advocate and mentor to the women in every country she visited. She continues to tirelessly serve her country as an advocate on many health care issues at home and abroad.

With such a distinquished list of accomplishments, it is no surprise the Jefferson Symphony Orchestra has chosen to honor Holly at its 50th Anniversary Gala in December. It is our chance to give her the recognition she deserves for her years of volunteer service and philanthropic assistance she has given to her community, her state, and her nation.

Mr. Speaker, it is with great admiration that I extend my praise to Holly Coors before this body of Congress and this nation. Holly brings great care and sincerity wherever her mission takes her and she is truly an individual of great character and conduct deserving of the honors and awards bestowed on her throughout her career.

## REMEMBERING SEPTEMBER 11, 2002

### HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HALL of Texas. Mr. Speaker, as we reflect on the tragic attacks on America on September 11, 2001, and the remarkable heroism of those who responded selflessly to those attacks, the weapon we have most, that we need most, and that we need now more than any time in the history of the Republic is prayer.

We need prayer for our brave men and women in the military who are fighting the war on terrorism and for those who will go, prayer for our President and our leaders as they chart our Nation's course, prayer for the families and friends of the more than 3,000 citizens who lost their lives in New York City, on the place that crashed in Pennsylvania and at the Pentagon, and prayer for the safety and security of our Nation.

We need prayer as well for the selfless and hardworking members of our police, firefighter and emergency response teams. The harsh reality of the danger of their jobs came crashing down on America on September 11 when 343 firefighters, 23 police officers and 37 Port Authority officers in New York City lost their lives at the World Trade Center.

With a year to ponder the terrible losses suffered that day and the threat of terrorism and evil still looming over our Nation, we realize now more than ever the debt of gratitude that we owe to those who place themselves in harm's way to protect our Nation and our citizens.

September 11 unified America and reawakened a spirit of determination and patriotism not seen since World War II. On that day we were reminded that freedom is not free—that there is a price that must be extracted to defeat tyranny and terrorism and to preserve the precious freedoms for which previous generations of heroes have fought so valiantly.

The war on terrorism will be a long war—but it is a war that we can and will win. So as we remember those who paid the ultimate sacrifice for their country and those still on the front lines in the battle for freedom, we are filled with renewed resolve that those who perpetrated these terrible acts will be brought to justice and that such a tragedy will never happen again in America.

May God bless the families of the victims of September 11, and may God continue to bless America.

## STATEMENT ON POW/MIA RECOGNITION DAY

SPEECH OF

### HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 19, 2002*

Mr. ISRAEL. Mr. Speaker, today I rise to bring my colleagues' attention to POW/MIA Recognition Day, which is tomorrow. Designated by the President and observed every year on the Third Friday of September, we take this day to remember the sacrifices of armed service-members who were captured in wartime, and whose ultimate fate remains unknown. Over the course of the last century more than 142,000 Americans were taken captive when fighting for their country. Those unfortunate enough to be taken prisoner all too often suffered from the very worst human treatment. Let us remember the sacrifice they made for their country.

I would encourage my colleagues not only to remember those who were captured, but

also those who have never returned. I commend the Department of Defense's use of DNA sampling of living relatives to identify unknown remains. I have linked their website from mine and encourage other members to do the same to publicize this important step. We must also continue to encourage Korea, Vietnam and other countries to fully cooperate with our efforts to bring resolution to these cases.

Mr. Speaker, our missing heroes deserve much more than just a passive pledge not to forget, they deserve our active support. Let us all remember that fact on MIA/POW Recognition Day.

## COMMENDING ''SPIRIT OF AMERICA'' AWARD RECIPIENTS PENNY FREDERICK AND KRISTIE BROUSSARD

### HON. CHRISTOPHER JOHN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. JOHN. Mr. Speaker, I rise today to commend the achievements of two of the staff members in my Lafayette, Louisiana Congressional District Office—Penny Frederick and Kristie Broussard.

On September 11, 2002, Penny and Kristie received the ''Spirit of America'' Award from the Diocese of Lafayette, Louisiana. They received this award in recognition of their dedicated service to those in need in our community.

As the commendation reads, both Penny and Kristie have ''upheld the founding spirit of America, extending a helping hand to those in need of new homes and new hope. Migration and Refugee Services extends this commendation with warmest regards and deepest appreciation.''

I applaud their patience and compassion for our constituents in Louisiana's 7th Congressional District. Their years of service to our community, and their dedication to their jobs is evidenced through this award.

Along with my outstanding team of staffers both in the district and in Washington, DC, I commend Penny and Kristie on this achievement.

## INTRODUCTION OF A RESOLUTION HONORING AMERICA'S SMALL BUSINESSES

### HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. LANGEVIN. Mr. Speaker, today I am joined by 35 of my colleagues in introducing a bipartisan resolution supporting the issuance of a postage stamp honoring America's small businesses.

Small businesses make up a significant sector of our economy. The estimated 25 million small businesses in this nation bring new and innovative services and products to the marketplace and provide business ownership opportunities to diverse and traditionally underrepresented groups. According to the Small Business Administration, small firms create two out of every three new jobs in America. In fact, small businesses employ 54 percent of the national work force, and the men and women who own small businesses represent over 99 percent of all employers.

Many cutting-edge technologies which have become a part of our daily lives are the product of small business innovation. From the zipper and quick-frozen food, to the personal computer and high-resolution x-ray microscopes, small businesses have been a major force in shaping the last half century. In fact, it is estimated that small firms produce twice as many innovations per employee as large firms. Although small businesses receive a low percentage of federal research and development funds, they are responsible for a larger percentage of patents than big companies.

I urge my colleagues to join me and the 35 original bipartisan cosponsors of this resolution in honoring the real engine of our nation's economy by supporting the issuance of a postage stamp in commemoration of America's small businesses.

## PAYING TRIBUTE TO DON PARSONS

### HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. McINNIS. Mr. Speaker, it is with earnest respect that I recognize the life and passing of Mr. Don Parsons of Northglenn, Colorado. Sadly, Mr. Parsons recently passed away at the end of August and as his family mourns the loss, I would like to pay tribute to his life and to the wonderful contributions he made to the Northglenn Community.

For over fifteen years Don Parsons served diligently as Northglenn's mayor, prescribing effective solutions to many of the problems that confronted the city through out the years. Mr. Parsons served Northglenn's citizens honestly and faithfully and his reputation for fair dealing won him the bipartisan approval of his constituency. Don Parsons's ability to manage money and his overwhelming popularity throughout the community helped the mayor to resolve many of Northglenn's financial problems and place the city in a strong position fiscally.

Mr. Parsons believed and often said, ''that those who are in charge should be those who are affected'' and that is exactly how he made decisions for the City of Northglenn. He was always a citizen first and never lost touch with the real issues and concerns that affected his constituency with in the community. Mr. Parsons also contributed his time and expertise to a variety of regional boards and commissions, including the Regional Air Quality Council, the Metro Mayor's Caucus, and the Denver Regional Council of Governments.

Mr. Speaker, it is with great sadness that I recognize Mr. Parsons before this body of Congress and this nation for the wonderful contributions he has made to the city of Northglenn, Colorado. My sincere condolences go out to his wife Jennifer, and his four children Julie, Jill, Doug, and Dirk. In life and in politics, Don Parsons always embodied the best of intentions. His loss will be deeply felt by the City if Northglenn and the entire state of Colorado.

## CONGRATULATING EBBY HALLIDAY ACERS

### HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HALL of Texas. Mr. Speaker, I rise today to honor one of Texas's most respected and most successful businesswomen—Ebby Halliday of Dallas—on the occasion of her 91st birthday. Her countless community activities, successful business venture and endless enthusiasm make her truly a remarkable woman.

Ebby Halliday Realtors, the company that she founded 47 years ago, has grown from its infancy into a nationally know entity. This company that began with one office has now expanded to become one of the world's largest independently-owned residential realty firms. And at the age of 91, Ebby still works 9-hour work days. Ebby Halliday Realtors assisted some 17,500 home buyers last year, and Ebby's remarkable business acumen is evident in the many awards that she has received from her industry and peers.

In 1996 Ebby was introduced into the Texas Business Hall of Fame. She was the recipient of the Distinguished Service Award from the National Association of Realtors and the International Real Estate Federation. Ernst and Young named her the regional Entrepreneur of the Year in 1997, and she was inducted into the Dallas Business Hall of Fame in 1999. In 2000, Ebby received the Lifetime Achievement Award in Real Estate from Texas A&M's Real Estate Center and was named Most Influential Woman in the Business and Professional Category by the Ft. Worth Business Press. Ebby was the first recipient of the Executive Women International's Executive Excellence Award—an award that will carry her name in the future—and she was conferred the Degree of Doctor of Humanities by Dallas Baptist University.

Aside from running a successful business, Ebby has selflessly devoted time and resources to local civic organizations. She has served as chairperson of the Thanksgiving Square Foundation, served on the boards of St. Paul Medical Foundation, the Communities Foundation of Texas, the Dallas Community College District Foundation, and the Better Business Bureau. She has also supported the Alexis de Tocqueville Society for the United Way, the Dallas Symphony Orchestra Guild, the Plano Symphony and the State Fair of Texas. She has been president of the North Dallas Chamber of Commerce and of the Greater Dallas Planning Council and served as a member of the Dallas Park and Recreation Board. In addition, the St. Paul Medical Center Foundation was dedicated to Ebby and her husband, Maurice Acers, in honor of their service.

Ebby's remarkable energy and philanthropy are a testament to her devotion to her career and to her community, and the State of Texas is grateful for her many significant contributions. Mr. Speaker, it is an honor for me to recognize an outstanding citizen for her remarkable lifetime of achievement and philanthropy—my dear friend, Ebby Halliday Acers.

## IN MEMORY OF ANN RITTLE MONACO

### HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to pay tribute to Ann Rittle Monaco, a woman of strength, elegance, integrity and a passion for music. Ann, the Artistic Director at the Merit School of Music, died suddenly on July 30, 2002 after being hit from behind by a van while she was out on a run.

Born in Pittsburgh, she earned her bachelor's degree in music from Western College for Women in Oxford, Ohio, and her master's from the New England Conservatory in Boston. While studying at Western, she met Richard A. Monaco, an accomplished composer on the faculty. The two married and in 1974 moved to Oak Park, Illinois.

Over the years, Ann Monaco taught at Chicago State University, and UIC and spent nearly three decades teaching piano to students in her home. In 1982, she joined Merit as a piano teacher, ten years later she became the artistic director. She also was running the school's Tuition-Free Conservatory at the time of her death.

Merit offers a full continuum of instruction in music, both classical and jazz. More than 30,000 youths have studied at Merit since it was founded in 1979. Merit's primary goals are to serve the economically disadvantaged, to help young people achieve their full musical potential, and to give young people a sense of purpose by stimulating personal and educational growth through music.

Ann was a major influence on thousands of Merit students. Known for wearing ''a velvet glove over an iron hand'' Ann was in charge of keeping high overall artistic standards at Merit, but she also was known for her fierce dedication to her students. She paid close individual attention to her students, doing everything from helping them find appropriate apparel for performances, to teaching them how to bow properly, and to fighting to secure scholarships for them to attend college.

Mr. Speaker, it is with profound sadness that we remember the life of Ann Monaco. Her death creates a void not only at Merit, but also throughout the music education community and the world of music. I urge my colleagues to join me in expressing our condolences to her family and colleagues.

## IN TRIBUTE TO ED HOGAN

### HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. GALLEGLY. Mr. Speaker, I rise in tribute to a close friend, Ed Hogan, who is celebrating his 75th birthday with no sign of slowing down.

Just over a year ago, I rose to honor Ed and his wife, Lynn, for celebrating 50 years of marriage as business partners and partners in life. I spoke extensively about their entrepreneurial success and their extensive philanthropic endeavors. Some highlights:

Together, Ed and Lynn opened Pleasant Travel Service and built it into a limited liability corporation with more than 1,700 employees and revenues exceeding $400 million.

They formed the Pleasant Hawaiian Holidays Foundation to grant annual scholarships and awards to benefit Hawaiian residents. The non-profit Hogan Family Foundation is dedicated to promoting an understanding of the importance of travel and tourism. The Ed and Lynn Hogan Program in Travel and Tourism is funded at Loyola Marymount University in Los Angeles.

Ed and Lynn volunteered for numerous other non-profit organizations focused on health care, child abuse and education, and sit on several boards, and have been honored frequently for their efforts.

In 1993, Ed and Lynn were inducted into the American Society of Travel Agents' ''Hall of Fame,'' the travel industry's highest honor. In 1995, Ed served as a delegate to the first White House Conference on Travel and Tourism.

The past year has been no less busy. Through the Hogan Family Foundation, Ed and Lynn opened a community garden in Thousand Oaks, California, that is free and open to the public. The Gardens of the World was the site of a one-year anniversary tribute to the heroes and victims of September 11, 2001, sponsored by the city and the foundation.

The Hogans also opened the Hogan Entrepreneurial Program at the Chaminade University of Honolulu. Ed joined the board of the California Tourism Association. And, they were blessed with the birth of their third grandchild, Gavin Hogan, son of Gary and Nadine.

Mr. Speaker, through a lifetime of hard work and family teamwork, Ed Hogan has achieved the American dream. At the same time he has upheld the highest ideals of America by sharing his knowledge and the fruits of his success. I know my colleagues will join Janice and me in wishing Ed Hogan a very happy 75th birthday. We can hardly wait to see what this year brings.

## IN RECOGNITION OF REVEREND FRED COBETT

### HON. SAXBY CHAMBLISS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. CHAMBLISS. Mr. Speaker, today I rise to recognize Reverend Fred Cobett, Children's Minister to Calvary Assembly of God in Dunwoody, Georgia, for taking on an unusual role to teach children how to help other children, while raising money for mission work.

At the request of the children he works with, Pastor Cobett agreed to spend seven entire days on the ledge of a billboard forty feet above interstate 285 in Atlanta for a fundraiser called Up in the Air For Kids. This event is part of the Boys and Girls Missionary Crusade, a non-profit organization founded by the Assemblies of God Church that exists to reach the children of the world by creating a heart of compassion in the children they lead. The Up in the Air For Kids project is geared specifically toward raising community awareness of the needs of children around the world who are living in poverty. Nine other states nationwide are also participating in this benefit and hope to reach a cumulative goal of one million dollars. Pastor Cobett's goal for Georgia is to raise 100,000 dollars that will be distributed among four separate charities including Convoy of Hope, Latin America Child Care, Africa's Children, and Asia's Little Ones.

As the son of a minister, I have a special affinity for Pastor Cobett and his ministry. It is a high calling, and I commend him for dedicating his life to teaching children the principles of charity, generosity, and goodwill in this creative manner.

## HONORING JEANNE CARIGLIA

### HON. JAMES P. McGOVERN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. McGOVERN. Mr. Speaker, I rise today to pay tribute to Jeanne Cariglia for her 30 years of service to the students, staff, and community of Gates Lane School of International Studies in Worcester, Massachusetts.

Mrs. Cariglia has done far more than efficiently serve breakfast and lunch for 30 years. Children also receive a warm smile, a friendly greeting, a hug, and a kind word. ''Jeannie'' is and always has been an integral part of the Gates Lane community. She has left such a lasting impression on our children that a Gates Lane Alumnus, author Jarett Krosoczka, has recently published a children's book entitled Bag Head wherein the ''lunch lady'' is a curly redheaded character named, as one would expect, ''Jeannie.''

An active participant in all school activities and social functions, Jeannie received the prestigious Thomas Jefferson Award from the Gates Lane community in 2000. This award was given in recognition of her service above and beyond the call of duty and, more importantly, for her caring attitude, with which she serves her little charges each and every day.

Jeannie's retirement, while a great loss to our community, promises to afford her more time to enjoy her home with her husband, Dante, and her family of three daughters and two grandchildren. She also plans on traveling to sunny places with both her family and her wide circle of friends.

Mr. Speaker, I am certain that the entire House of Representatives joins me in congratulating Mrs. Jeannie Cariglia on her long career of service to the Gates Lane School of International Studies, and wishes her the best of luck in retirement.

## INTRODUCTION OF NATIONAL VISITING NURSE ASSOCIATIONS WEEK

### HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. MARKEY. Mr. Speaker, today Representative JOHN PETERSON (R–PA) and I are introducing a bill to establish a National Visiting Nurse Associations Week in honor of the army of health care heroes who, every day, comfort, care for, and assist our loved ones. Modern society takes for granted the need for nursing as an indispensable component of our public health system, but this was not always

the case. The very concept of a visiting nurse can be traced to the pioneering work of Florence Nightingale. She reformed British military hospitals in the Crimean War through an expose in the British press, she professionalized nursing and made it an acceptable profession for educated women, devoted the rest of her life to building on her experiences, setting standards and writing books, until the mission of nursing had gained the respect of the world.

When Henry Wadsworth Longfellow read of the work of Florence Nightingale, he penned a poem, Santa Filomena, that spoke of the deep appreciation owed by all of us to those dedicated to service in the ultimate caring profession. He wrote:

Whene'er a noble deed is wrought,
Whene'er is spoken a noble thought,
Our hearts, in glad surprise,
To higher levels rise.
The tidal wave of deeper souls
Into our inmost being rolls,
And lifts us unawares
Out of all meaner cares.

The Visiting Nurse Associations of today are founded on the principle that the sick, the disabled, and the elderly benefit most from healthcare when it is offered in their own homes. They are non-profit home health agencies that provide cost-effective and compassionate home and community-based health care to individuals, regardless of their condition or ability to pay for services. Through these exceptional organizations, 90,000 clinicians dedicate their lives to bringing healthcare into the homes of over 4 million Americans every year. In the face of rising costs and drastic changes in our health care system, visiting nurse associations have continued to deliver high quality health services for over 120 years.

It is time for Congress to recognize the vital services that visiting nurses provide their patients. Moreover, visiting nurses also are an indispensable lifeline for families. The comfort and quality care that visiting nurses provide can help family members cope with the difficulties of a loved one's illness.

I am proud to be introducing this important legislation with my colleague Representative PETERSON and urge my colleagues to join us in supporting National Visiting Nurse Associations Week.

## PERSONAL EXPLANATION

### HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Ms. McCARTHY of Missouri: Mr. Speaker, due to a problem with my voting card my vote on rollcall No. 403 was not recorded. Had my vote card operated properly I would be recorded as a ''yea'' on the Waters motion to instruct House conferees on H.R. 3295, The Help America Vote Act of 2001.

## TRIBUTE TO LANCE ARMSTRONG

### HON. EARL BLUMENAUER

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. BLUMENAUER. Mr. Speaker, today I am introducing a resolution honoring and congratulating Lance Armstrong on his fourth successive victory of the Tour de France. One of the world's most grueling athletic events, this year's Tour de France bicycling race covered 2,036 miles in 20 days. Winning this challenging race is an amazing feat in itself but Lance Armstrong's triumph is even more remarkable considering his comeback from cancer. Through his efforts with the Lance Armstrong Foundation, Mr. Armstrong has been an effective advocate for cancer survivorship and research.

What I find particularly interesting is the connection between health and bicycling. The active lifestyle inherent in bicycling and the environmental benefits of bicycling as an emission-free, non-polluting transportation alternative is a cornerstone of my work on the House Transportation and Infrastructure Committee and as Chair of the bipartisan Congressional Bike Caucus.

The resolution being introduced today is a deserving tribute to Lance Armstrong and his Tour de France victory, commitment to cancer awareness and survivorship, and promotion of bicycling.

## TRIBUTE TO DOLORES HUERTA

### HON. RUBÉN HINOJOSA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. HINOJOSA. Mr. Speaker, I rise today to bring attention to an outstanding member of the Hispanic community. Dolores Huerta has dedicated her life to fighting for equality and fairness for our Nation's farm workers. She has fought equally hard to protect first amendment rights and other issues of justice.

Ms. Huerta began her career as an educator. Her students were the children of farm workers and they routinely went without adequate food and clothing. In response, she founded the Stockton chapter of the Community Service Organization to educate and provide assistance to these laborers. This initial effort grew into the founding of the National Farm Worker Association, a precursor to United Farm Workers Organizing Committee. Ms. Huerta, along with this organization, has advocated against the use of harmful pesticides such as DDT and Parath; on and has led a national campaign for environmental justice. Ms. Huerta was inducted to the Women's Hall of Fame in 1993. She has received the American Civil Liberties Union Roger Baldwin Medal of Liberty Award, as well as many other prestigious recognitions of her dedication.

I am proudly cosponsor H. Con. Res. 177, a bipartisan resolution to honor Dolores Huerta for her tireless efforts on behalf of our nation. Her work particularly interests the 15th Congressional District of Texas, as 60 percent of the national migrant population resides in this area of south Texas.

October 15, 2002 marks the end of Hispanic Heritage Month. I urge my colleagues to bring H. Con. Res. 177 to the floor before the end of this month in order to appropriately acknowledge the contributions of Dolores Huerta, a truly historic Latina.

## IN SUPPORT OF H. CON. RES. 177—HONORING DOLORES HUERTA

### HON. SILVESTRE REYES

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 2002*

Mr. REYES. Mr. Speaker, as Chair of the Congressional Hispanic Caucus, I would like to commend my colleague, Representative HILDA SOLIS of California, for introducing H. Con. Res. 177, honoring civil rights leader Dolores Huerta. And I share my colleague's frustration with the undue delay in bringing this resolution before the House.

With National Hispanic Heritage Month celebrated between September 15 and October 15, there isn't a better time to bring this resolution to the floor. This year's celebration would be incomplete if we do not recognize a historic Latina who has led the fight for equality and justice in the United States—Dolores Huerta.

Dolores Huerta's contributions are no less than those that our nation has proudly recognized over the years. Nearly 100 other Members of Congress acknowledge the need to give Dolores Huerta the recognition she deserves and have co-sponsored H. Con. Res. 177.

The contributions of Dolores Huerta are well known and have already been recognized by numerous organizations. Dolores Huerta was inducted into the Women's Hall of Fame in 1993 for her relentless dedication to farm worker issues. She has also received the American Civil Liberties Union Roger Baldwin Medal of Liberty Award and the Ellis Island Medal of Freedom Award. And in March, she was named one of six Women Sustaining the American Spirit honorees by the National Women's History Project.

Dolores Huerta has fought for the rights of underserved laborers for more than 40 years. She has advocated against the use of harmful pesticides such as DDT and Parathyon, led a national campaign for environmental justice, and protected our First Amendment rights through peaceful protests and demonstrations.

Dolores Huerta began as a teacher, but left the teaching profession because she couldn't stand to see her students—children of farmworkers—arrive at school hungry and without shoes. She founded the Stockton chapter of the Community Service Organization in 1955 to educate and assist farmworkers. In 1962, she joined with Cesar Chavez to found the National Farm Workers Association, a precursor to the United Farm Workers Organizing Committee. The organization has repeatedly fought for the rights of farmworkers, advocated against the use of harmful pesticides and led a national campaign for environmental justice.

Mr. Speaker, I ask you and the rest of the leadership to bring H. Con. Res. 177 to the floor, so we may give Dolores Huerta the recognition she so richly deserves during Hispanic Heritage Month.

## SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, September 26, 2002 may be found in the Daily Digest of today's RECORD.

## MEETINGS SCHEDULED

### SEPTEMBER 27

9 a.m.
Armed Services
To hold hearings to examine the nominations of General James L. Jones, Jr., USMC, for reappointment to the grade of general and to be Commander, United States European Command and Supreme Allied Commander, Europe, Admiral James O. Ellis, Jr., USN, for reappointment to the grade of admiral and to be Commander, United States Strategic Command, Lieutenant General Michael W. Hagee, USMC, for appointment to the grade of general and to be Commandant of the Marine Corps, Charles S. Abell, of Virginia, to be Deputy Under Secretary of Defense for Personnel and Readiness, Thomas Forrest Hall, of Oklahoma, to be Assistant Secretary of Defense for Reserve Affairs, and Charles E. Erdmann, of Colorado, to be a Judge of the United States Court of Appeals for the Armed Forces.
SH–216

10 a.m.
Governmental Affairs
International Security, Proliferation and Federal Services Subcommittee
To hold hearings to examine the annual report of the Postmaster General, focusing on the Postal Service Transformation Plan, the progress of cleaning anthrax-contaminated postal facilities, and further steps the Postal Service will take to reduce debt and increase financial transparency.
SD–342

### SEPTEMBER 30

10 a.m.
Environment and Public Works
Transportation, Infrastructure, and Nuclear Safety Subcommittee
To hold hearings to examine the conditions and performance of the federal-aid highway system.
SD–406

2:30 p.m.
Governmental Affairs
International Security, Proliferation and Federal Services Subcommittee
To hold hearings to examine reports that nations interested in chemical, biological, radiological, and nuclear weapons are placing significant emphasis on bolstering their domestic production capabilities.
SD–342

### OCTOBER 1

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings to examine the government's role in promoting the future of the telecommunications industry and broadband deployment.
SR–253

10 a.m.
Environment and Public Works
To hold hearings to examine environmental standards for schools such as school siting in relation to toxic waste sites and green building codes, focusing on environmental and energy concerns relevant to school properties.
SD–406

Judiciary
To hold hearings to examine recent Supreme Court jurisprudence on federalism issues.
SD–226

2:15 p.m.
Judiciary
Immigration Subcommittee
To hold hearings to examine the detention and treatment of Haitian asylum seekers.
SD–226

### OCTOBER 2

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings to examine airlines viability in the current economic climate.
SR–253

10 a.m.
Judiciary
To hold hearings to examine protecting children from child pornography.
SD–226

2 p.m.
Environment and Public Works
To hold hearings to examine the status and studies of the health impacts of fine particles which result from fuel combustion from motor vehicles, power generation, and industrial facilities, as well as from residential fireplaces and wood stoves, known as PM–2.5, focusing on those effects associated with power plant emissions.
SD–406

### OCTOBER 3

9 a.m.
Rules and Administration
To hold hearings to examine the nomination of Bruce R. James, of Nevada, to be Public Printer, Government Printing Office.
SR–301

9:30 a.m.
Commerce, Science, and Transportation
To hold oversight hearings to examine park overflight regulations.
SR–253

2:30 p.m.
Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold hearings to examine Title IX and the Sciences.
SR–253

### OCTOBER 8

10 a.m.
Judiciary
Constitution Subcommittee
To hold hearings to examine the detention of U.S. citizens.
SD–226

# *Daily Digest*

## HIGHLIGHTS

**House committees ordered reported seven sundry measures.**

# Senate

## *Chamber Action*

***Routine Proceedings, pages S9179–S9353***

**Measures Introduced:** Six bills were introduced, as follows: S. 3001–3006. **Page S9229**

**Measures Passed:**

***Commending Mary Baker Eddy:*** Senate agreed to H. Con. Res. 458, recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity. **Page S9350**

***Intelligence Authorization:*** Select Committee on Intelligence was discharged from further consideration of H.R. 4628, to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, after striking all after the enacting clause and inserting in lieu thereof the text of S. 2506, Senate companion measure, after withdrawing the committee amendments, and agreeing to the following amendment proposed thereto: **Pages S9350–53**

Hollings (for Graham) Amendment No. 4752, in the nature of a substitute. **Pages S9350–53**

Senate insisted on its amendment, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Graham, Levin, Rockefeller, Feinstein, Wyden, Durbin, Bayh, Edwards, Mikulski, Shelby, Kyl, Inhofe, Hatch, Roberts, DeWine, Thompson, and Lugar. **Page S9353**

Subsequently, S. 2506 was returned to the Senate calendar. **Page S9351**

**Department of the Interior Appropriations:** Senate resumed consideration of H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, taking action on the following amendments proposed thereto: **Pages S9185–86**

Pending:

Byrd Amendment No. 4472, in the nature of a substitute. **Pages S9185–86**

Byrd Amendment No. 4480 (to Amendment No. 4472), to provide funds to repay accounts from which funds were borrowed for emergency wildfire suppression. **Page S9185**

Craig/Domenici Amendment No. 4518 (to Amendment No. 4480), to reduce hazardous fuels on our national forests. **Page S9185**

Byrd/Stevens Amendment No. 4532 (to Amendment No. 4472), to provide for critical emergency supplemental appropriations. **Page S9185**

Daschle motion to reconsider the vote (Vote No. 224) by which cloture was not invoked on Byrd Amendment No. 4480 (to Amendment No. 4472), listed above. **Page S9186**

During consideration of this measure today, Senate also took the following action:

By 51 yeas to 47 nays (Vote No. 224), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate failed to approve the motion to close further debate on Byrd Amendment No. 4480 (to Amendment No. 4472), listed above. **Pages S9185–86**

**Homeland Security Act:** Senate continued consideration of H.R. 5005, to establish the Department of Homeland Security, taking action on the following amendments proposed thereto: **Pages S9186–S9216**

Pending:

Lieberman Amendment No. 4471, in the nature of a substitute. **Pages S9186–S9216**

Daschle motion to reconsider the vote (Vote No. 225) by which cloture was not invoked on Lieberman Amendment No. 4471, listed above. **Page S9186**

Gramm/Miller Amendment No. 4738 (to Amendment No. 4471), of a perfecting nature, to prevent terrorist attacks within the United States. **Pages S9186–S9200, S9205–06, S9207–16**

Nelson (NE.) Amendment No. 4740 (to Amendment No. 4738), to modify certain personnel provisions. **Pages S9200–05**

Daschle motion to commit the bill to the Committee on Governmental Affairs and that it be reported back forthwith with the pending Lieberman Amendment No. 4471, listed above, as amended. **Page S9205**

Daschle Amendment No. 4742 (to the instructions of the motion to commit H.R. 5005 to the Committee on Governmental Affairs), of a perfecting nature, to prevent terrorist attacks within the United States. **Page S9205**

Daschle Amendment No. 4743 (to Amendment No. 4742), to modify certain personnel provisions. **Page S9205**

During consideration of this measure today, Senate also took the following action:

By 49 yeas to 49 nays (Vote No. 225), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate failed to approve the motion to close further debate on Lieberman Amendment No. 4471, listed above. **Page S9186**

A motion was entered to close further debate on Gramm/Miller Amendment No. 4738 (to Amendment No. 4471), listed above and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a cloture vote could occur on Thursday, September 26, 2002. **Page S9207**

A unanimous-consent agreement was reached providing for further consideration of the bill at 11:15 a.m., on Thursday, September 26, 2002. **Page S9353**

**Messages From the House:** **Page S9228**

**Measures Referred:** **Pages S9228–29**

**Executive Reports of Committees:** **Page S9229**

**Additional Cosponsors:** **Pages S9229–31**

**Statements on Introduced Bills/Resolutions:** **Pages S9231–34**

**Additional Statements:** **Pages S9226–28**

**Amendments Submitted:** **Pages S9234–S9349**

**Notices of Hearings/Meetings:** **Page S9350**

**Authority for Committees to Meet:** **Page S9350**

**Record Votes:** Two record votes were taken today. (Total—225) **Page S9186**

**Adjournment:** Senate met at 9:30 a.m., and adjourned at 6:35 p.m., until 9:15 a.m., on Thursday, September 26, 2002. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S9353).

# *Committee Meetings*

*(Committees not listed did not meet)*

## STEM CELL RESEARCH

*Committee on Appropriations:* Subcommittee on Labor, Health and Human Services, and Education concluded hearings to examine the status of the implementation of the Federal stem cell research policy, and related provisions of S. 2349, to prohibit human cloning while preserving important areas of medical research, including stem cell research, and S. 1899, to amend title 18, United States Code, to prohibit human cloning, after receiving testimony from Elias Zerhouni, Director, National Institutes of Health, Department of Health and Human Services; California State Senator Deborah Ortiz, Sacramento; Curt I. Civin, Johns Hopkins University School of Medicine, Baltimore, Maryland; George Q. Daley, Massachusetts Institute of Technology, Whitehead Institute, Cambridge; Roger Pedersen, University of Cambridge Department of Surgery, United Kingdom; and Gerald P. Schatten, Pittsburgh Development Center/Magee-Women's Research Institute, Pittsburgh, Pennsylvania.

## U.S.-IRAQ POLICY

*Committee on Armed Services:* Committee concluded hearings to examine U.S. policy on Iraq, after receiving testimony from James R. Schlesinger, MITRE Corporation, Arlington, Virginia, former Secretary of Defense, former Secretary of Energy, and former Director of Central Intelligence; Samuel R. Berger, Stonebridge International, Washington, D.C., former Assistant to the President for National Security Affairs.

## AFFORDABLE HOUSING PRODUCTION

*Committee on Banking, Housing, and Urban Affairs:* Subcommittee on Housing and Transportation resumed hearings to examine the challenges of meeting the supply of affordable housing for working families, and related proposals including S. 652, to promote the development of affordable, quality rental housing in rural areas for low-income households, and S. 2967, to promote the production of affordable low-income housing, after receiving testimony from Senators Bond and Edwards; Mayor Thomas M. Menino, of Boston, Massachusetts, on behalf of the U.S. Conference of Mayors; Richard H. Godfrey, Jr., Rhode Island Housing and Mortgage Finance Corporation, Providence, on behalf of National Council of State Housing Agencies; and William Picotte, Oti Kaga, Inc., on behalf of the Housing Assistance Council, Eagle Butte, South Dakota.

## TOURISM INDUSTRY

*Committee on Commerce, Science, and Transportation:* Subcommittee on Consumer Affairs, Foreign Commerce, and Tourism concluded hearings to examine the state of the tourism industry one year after September 11, 2001, after receiving testimony from John K. Durst, South Carolina Department of Parks, Recreation and Tourism, Columbia,; Ann McDowell, Branson/Lakes Area Chamber of Commerce, and Noel I. Hentschel, American Tours International, Inc., both of Branson, Missouri; Hal F. Rosenbluth, Rosenbluth International, Philadelphia, Pennsylvania; Jonathan Tisch, Loews Hotels, on behalf of the Travel Business Roundtable, and Fred Lounsberry, Universal Parks and Resorts, on behalf of the Travel Industry Association of America, both of Washington, D.C.

## HIGHWAY TRUST FUND

*Committee on Finance:* Committee concluded joint hearings with the Committee on Environment and Public Works to examine alternatives for financing the U.S. surface transportation system, the next highway bill, the Highway Trust Fund, and reauthorization of TEA–21, after receiving testimony from Phyllis F. Scheinberg, Deputy Assistant Secretary of Transportation for Budget and Programs; JayEtta Z. Hecker, Director, Physical Infrastructure Issues, General Accounting Office; Janice Hahn, Governing Board of the Alameda Corridor Transportation Authority, Los Angeles, California; Pete K. Rahn, New Mexico Department of Transportation, Santa Fe; John C. Horsley, American Association of State Highway and Transportation Officials, Washington, D.C.; Jeffrey Carey, Merrill Lynch, New York, New York; and David Seltzer, Mercator Advisors, LLC, University of Southern California National Center for Innovations in Public Finance, Los Angeles.

## U.S.-IRAQ POLICY

*Committee on Foreign Relations:* Committee continued hearings to examine U.S. policy on Iraq, receiving testimony from Richard C. Holbrooke, Council on Foreign Relations, New York, New York, former U.S. Ambassador to the United Nations; and Robert C. McFarlane, Energy and Communications Solutions, Washington, D.C., former National Security Advisor.

Hearings continue tomorrow.

## BUSINESS MEETING

*Committee on Health, Education, Labor, and Pensions:* Committee ordered favorably reported the following business items:

S. 2969, to provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, with an amendment in the nature of a substitute;

S. 2998, to reauthorize the Child Abuse Prevention and Treatment Act, the Family Violence Prevention and Services Act, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and the Abandoned Infants Assistance Act of 1988;

S. 2499, to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, with an amendment in the nature of a substitute;

S. 2980, to revise and extend the Birth Defects Prevention Act, with an amendment in the nature of a substitute;

S. 1806, to amend the Public Health Service Act with respect to health professions programs regarding the practice of pharmacy, with an amendment in the nature of a substitute; and

The nominations of David Wenzel, of Pennsylvania, Marco A. Rodriguez, of California, Milton Aponte, of Florida, Glenn Bernard Anderson, of Arkansas, Barbara Gillcrist, of New Mexico, and Graham Hill, of Virginia, each to be a Member of the National Council on Disability, and Michelle Guillermin, of Maryland, to be Chief Financial Officer, Corporation for National and Community Service.

## ASBESTOS LITIGATION

*Committee on the Judiciary:* Committee concluded hearings to examine the current state of asbestos litigation, including claims for relief by certain corporations and insurance companies, and a system for compensating asbestos victims, after receiving testimony from Senators Baucus and Ben Nelson; David T. Austern, Claims Resolution Management Corporation, Fairfax, Virginia; Frederick M. Baron, Baron and Budd, Dallas, Texas, on behalf of the Association of Trial Lawyers of America; Walter E. Dellinger, O'Melveny and Myers, and Jonathan P. Hiatt, AFL–CIO, both of Washington, D.C.; and Steven Kazan, Kazan, McClain, Edises, Abrams, Fernandez, Lyons, and Farrise, Oakland, California.

## BUSINESS MEETING

*Committee on Indian Affairs:* Committee ordered favorably reported the following bills:

S. 958, to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, with an amendment in the nature of a substitute; and

H.R. 2880, to amend laws relating to the lands of the enrollees and lineal descendants of enrollees whose names appear on the final Indian rolls of the Muscogee (Creek), Seminole, Cherokee, Chickasaw,

and Choctaw Nations (historically referred to as the Five Civilized Tribes).

**NOMINATIONS**

*Committee on Indian Affairs:* Committee concluded hearings on the nominations of Philip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission, and Quanah Crossland Stamps, of Virginia, to be Commissioner of the Administration for Native Americans, Department of Health and Human Services, after the nominees testified and answered questions in their own behalf. Mr. Hogen was introduced by Senator Johnson and Representative Thune.

# House of Representatives

## *Chamber Action*

**Measures Introduced:** 15 public bills, H.R. 5454–5468; and 11 resolutions, H.J. Res. 111, H. Con. Res. 483–487, and H. Res. 554–558, were introduced. **Pages H6692–93**

**Reports Filed:** Reports were filed today as follows:

Conference report on H.R. 2215, to authorize appropriations for the Department of Justice for fiscal year 2002 (H. Rept. 107–685);

H.R. 3340, to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over (H. Rept. 107–686);

S. 487, to amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement (H. Rept. 107–687);

H.R. 1811, to provide permanent funding for the payment in lieu of taxes program (H. Rept. 107–688);

H.R. 2408, to provide equitable compensation to the Unction Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands (H. Rept. 107–689);

H.R. 3747, to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System (H. Rept. 107–690);

H.R. 3896, to repeal the reservation of mineral rights made by the United States when certain lands in Livingston Parish, Louisiana, were conveyed by Public Law 102–562 (H. Rept. 107–691);

H.R. 4853, to provide that land which is owned by the Seminole Tribe of Florida but which is not held in trust by the United States for the Tribe may be mortgaged, leased, or transferred by the Tribe without further approval by the United States, amended (H. Rept. 107–692);

H.R. 4600, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, amended (H. Rept. 107–693 Pt. 1, Committee on the Judiciary);

H.R. 4600, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, amended (H. Rept. 107–693 Pt. 2, Committee on Energy and Commerce);

H. Res. 550, providing for consideration of H.J. Res. 111, making continuing appropriations for the fiscal year 2003 (H. Rept. 107–694);

H. Res. 551, waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (H. Rept. 107–695);

H. Res. 552, waiving points or order against the conference report to accompany the bill (H.R. 2215) to authorize appropriations for the Department of Justice for fiscal year 2002 (H. Rept. 107–696); and

H. Res. 553, providing for consideration of H.R. 4600, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery room (H. Rept. 107–697). **Pages H6586–H6649, H6691–92**

**Speaker Pro Tempore:** Read a letter from the Speaker wherein he appointed Representative LaHood to act as Speaker pro tempore for today. **Page H6561**

**Guest Chaplain:** The prayer was offered by the guest Chaplain, Rabbi Melvyn May of West end Temple Sinai Congregation, Neponsit, New York. **Page H6561**

**Journal:** the House agreed to the Speaker's approval of the Journal of Tuesday, Sept. 24 by a yea-and-nay vote of 366 yeas to 48 nays with 1 voting "present", Roll No. 407. **Pages H6561, H6564–65**

**Suspensions:** The House agreed to suspend the rules and pass the following measures that were debated on Tuesday, Sept. 24.

***Victims of Terrorist Attacks Memorial in Washington, D.C.:*** H.R. 2982, to authorize the establishment of a memorial within the area in the District of Columbia referred to in the Commemorative Works Act as ''Area I'' or ''Area II'' to the victims of terrorist attacks on the United States, to provide for the design and construction of such a memorial (agreed to by a yea-and-nay vote of 418 yeas with none voting ''nay,'' Roll No. 408). Agreed to amend the title so as to read: ''A bill to authorize the establishment of a memorial to victims who died as a result of terrorist acts against the United States or its people, at home or abroad.''; and **Page H6565**

***Historical Significance of 100 Years of Korean Immigration:*** H. Con. Res. 297, recognizing the historical significance of 100 years of Korean immigration to the United States (agreed to by a yea-and-nay vote of 417 yeas with none voting ''nay,'' Roll No. 409). **Pages H6565–66**

**Abortion Non-Discrimination Act:** The House passed H.R. 4691, to prohibit certain abortion-related discrimination in governmental activities, by a recorded vote of 229 ayes to 189 noes with 2 voting ''present'', Roll No. 412. **Pages H6574–86**

Rejected the Brown of Ohio motion to recommit the bill to the Committee on Energy and Commerce with instructions to report it back with amendments that prohibit institutions from withholding medically appropriate information or services from a patient by a yea-and-nay vote of 191 yeas to 230 nays, Roll No. 411. **Pages H6584–86**

Agreed to H. Res. 546, the rule that provided for consideration of the bill by a yea-and-nay vote of 229 yeas to 194 nays, Roll No. 410. **Pages H6566–74**

**Foreign Relations Authorization Conference Report:** The House agreed to the conference report on H.R. 1646, to authorize appropriations for the Department of State for fiscal years 2002 and 2003 by voice vote. **Pages H6652–59**

Agreed to H. Res. 545, the rule that provided for consideration of the conference report by voice vote. **Pages H6649–52**

**Foreign Relations Authorization Enrollment Correction:** The House agreed to H. Con. Res. 483, directing the Clerk of the House of Representatives to make technical corrections in the enrollment of H.R. 1646. **Pages H6659–60**

**Consideration of Sense of the House Resolutions:** The House agreed to H. Res. 547, the rule that is providing for consideration of H. Res. 540 (expressing the sense of the House of Representatives that Congress should complete action on H.R. 3762, the Pension Security Act of 2002); H. Res. 544 (expressing the sense of the House of Representatives on permanency of pension reform provisions); and H. Res. 543 (expressing the sense of the House that Congress should complete action on H.R. 4019, making marriage tax relief permanent) by voice vote. Earlier agreed to order the previous question by a yea-and-nay vote of 217 yeas to 200 nays, Roll No. 413. **Pages H6660–69**

**Urging Action on the Pension Security Act:** The House agreed to H. Res. 540, expressing the sense of the House of Representatives that Congress should complete action on H.R. 3762, the Pension Security Act of 2002 by a yea-and-nay vote of 258 yeas to 152 nays, Roll No. 414. The resolution was considered pursuant to the provisions of H. Res. 547. **Pages H6669–77, H6681**

**Permanency of Pension Reform Provisions:** The House agreed to H. Res. 544, expressing the sense of the House of Representatives on permanency of pension reform provisions by a yea-and-nay vote of 291 yeas to 118 nays, Roll No. 415. The resolution was considered pursuant to the provisions of H. Res. 547. **Pages H6678–81, H6681–82**

**Motion to Instruct Conferees—Help America Vote Act:** The House completed debate on the Eddie Bernice Johnson motion to instruct conferees on H.R. 3295, Help America Vote Act to take such actions as may be appropriate to ensure that a conference report is filed on the bill prior to October 1, 2002. Further proceedings on the motion were postponed. **Pages H6682–85**

**Quorum Calls—Votes:** Eight yea-and-nay votes and one recorded vote developed during the proceedings of the House today and appear on pages H6564–65, H6565, H6565–66, H6574, H6585–86, H6586, H6668–69, H6681, and H6681–82. There were no quorum calls.

**Adjournment:** The House met at 10 a.m. and adjourned at 9:05 p.m.

# *Committee Meetings*

## USDA—CIVIL RIGHTS PROGRAM—FARMER PROGRAM PARTICIPANTS

*Committee on Agriculture:* Subcommittee on Department Operations, Oversight, Nutrition and Forestry held a hearing on Civil Rights Program of the USDA for Farmer Program Participants. Testimony was heard from Lawrence J. Dyckman, Director, Natural Resources and Environment, GAO; Lou Gallegos, Assistant Secretary, Departmental Administration, USDA; and public witnesses.

## MISCELLANEOUS MEASURES

*Committee on Energy and Commerce:* Ordered reported the following: H.R. 2037, amended, Protection of Lawful Commerce in Arms Act; H.R. 4701, amended, Sports Agent Responsibility and Trust Act; H. Res. 398, Recognizing the devastating impact of fragile X, urging increased funding for research on fragile X, and commending the goals of National Fragile X Research Day; and a measure to be introduced Patient Safety and Quality Improvement Act.

## REGARDING THE TRANSITION TO DIGITAL TV

*Committee on Energy and Commerce:* Subcommittee on Telecommunications and the Internet held a hearing on a measure Regarding the Transition to Digital Television. Testimony was heard from public witnesses.

## CHECK CLEARING FOR THE 21ST CENTURY

*Committee on Financial Services:* Subcommittee on Financial Institutions and Consumer Credit held a hearing on H.R. 5414, Check Clearing for the 21st Century Act. Testimony was heard from Roger W. Ferguson, Jr., Vice Chairman, Board of Governors, Federal Reserve System; Robert M. Fenner, General Counsel, National Credit Union Administration; and public witnesses.

## MISCELLANEOUS MEASURES

*Committee on International Relations:* Subcommittee on Europe approved for full Committee action the following measures: H. Res. 468, amended, Transatlantic Security and NATO Enhancement Resolution of 2002; H. Con. Res. 116, Recommending the integration of Lithuania, Latvia and Estonia into the North Atlantic Treaty Organization (NATO); and H. Res. 253, Recommending the integration of the Republic of Slovakia into the North Atlantic Treaty Organization (NATO).

## SATELLITE RADIO FREEDOM ACT; SATELLITE SERVICES ACT

*Committee on the Judiciary:* Subcommittee on Commercial and Administrative Law held a hearing on the following bills: H.R. 4869, Satellite Radio Freedom Act; and H.R. 5429, Satellite Services Act of 2002. Testimony was heard from Representative Tom Davis; and public witnesses.

## JUSTICE FOR UNITED STATES PRISONERS OF WAR ACT

*Committee on the Judiciary:* Subcommittee on Immigration, Border Security, and Claims held a hearing on H.R. 1198, Justice for United States Prisoners of War Act of 2001. Testimony was heard from Representative Rohrabacher; William H. Taft, IV, Legal Advisor, Department of State; Rob McCallum, Jr., Assistant Attorney General, Civil Division, Department of Justice; and Lester I. Tenney, former Prisoner of War.

## MISCELLANEOUS MEASURES

*Committee on Resources:* Held a hearing on the following bills: H.R. 992, to provide grants to local governments to assist such local governments in participating in certain decisions related to certain Indian groups and Indian tribes; H.R. 2345, Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001; and H.R. 5155, Native American Sacred Lands Act. Testimony was heard from Representatives Johnson of Connecticut, Simmons, Moran of Virginia, and Mrs. Davis of Virginia; from the following officials of the Department of the Interior: Chris Kearney, Deputy Assistant Secretary, Policy and International Affairs; and Michael Smith, Director, Office of Tribal Services, Bureau of Indian Affairs; and public witnesses.

## HELP EFFICIENT, ACCESSIBLE, LOW COST, TIMELY HEALTH CARE (HEALTH) ACT

*Committee on Rules:* Granted, by record vote of 9 to 2, a closed rule providing 1 hour of debate in the House on H.R. 4600, Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. The rule waives all points of order against consideration of the bill. The rule provides that the bill shall be considered as read for amendment. The rule provides that in lieu of the amendments recommended by the Committee on the Judiciary and Energy and Commerce now printed in the bill, the amendment in the nature of a substitute printed in the Rules Committee report shall be considered as adopted. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Chairman Sensenbrenner and Representatives Nadler, Scott, Markey, Brown of Ohio, Eshoo, Berkley and Hoeffel.

## CONFERENCE REPORT—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

*Committee on Rules:* Granted, by voice vote, a rule waiving all points of order against the conference report to accompany H.R. 2215, 21st Century Department of Justice Appropriations Authorization Act, and against its consideration. The rule provides that the conference report shall be considered as read. Testimony was heard from Chairman Sensenbrenner.

### SAME DAY CONSIDERATION—RESOLUTION REPORTED FROM COMMITTEE ON RULES

*Committee on Rules:* Granted, by voice vote, a resolution waiving clause 6(a) of rule XIII (requiring a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee) against certain resolutions reported from the Rules Committee. The resolution applies the waiver to any special rule reported on the legislative day of Thursday, September 26, 2002, providing for consideration or disposition of a joint resolution making continuing appropriations for the fiscal year 2003.

### CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2003

*Committee on Rules:* The Committee granted, by voice vote, a closed rule providing one hour of debate in the House on H.J. Res. 111, making continuing appropriations for the fiscal year 2003, equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The rule waives all points of order against consideration of the joint resolution. Finally, the rule provides one motion to recommit.

### INCREASED STEEL TARIFFS—AMERICAN MANUFACTURERS—UNINTENDED CONSEQUENCES

*Committee on Small Business:* Continued hearings entitled ''Lost Jobs, More Imports: Unintended Consequences of Higher Steel Tariffs (Part II).'' Testimony was heard from Grant D. Aldonas, Under Secretary, International Trade, International Trade Administration, Department of Commerce; and public witnesses.

### MISCELLANEOUS MEASURES

*Committee on Transportation and Infrastructure:* Ordered reported the following: bills: H.R. 5083, to designate the United States courthouse at South Federal Place in Santa Fe, New Mexico, as the ''Santiago E. Campos United States Courthouse;'' H.R. 5335, to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Tony Hall Federal Building and United States Courthouse;''and H.R. 5428, amended, Water Resources Development Act of 2002.

The Committee also approved several U.S. Army Corps of Engineers Survey resolutions.

## *Joint Meetings*

### SECURING AMERICA'S FUTURE ENERGY ACT

*Conferees* met to resolve the differences between the Senate and House passed versions of H.R. 4, to enhance energy conservation, research and development and to provide for security and diversity in the energy supply for the American people, but did not complete action thereon, and will meet again tomorrow.

## NEW PUBLIC LAWS

*(For last listing of Public Laws, see* DAILY DIGEST *of September 19, 2002, p. D961)*

H.R. 3287, to redesignate the facility of the United States Postal Service located at 900 Brentwood Road, NE, in Washington, D.C., as the ''Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center''. Signed on September 24, 2002. (Public Law 107–225)

H.R. 3917, to authorize a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a planned attack on our Nation's Capital. Signed on September 24, 2002. (Public Law 107–226)

H.R. 5207, to designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the ''Thomas E. Burnett, Jr. Post Office Building''. Signed on September 24, 2002. (Public Law 107–227)

## COMMITTEE MEETINGS FOR THURSDAY, SEPTEMBER 26, 2002

*(Committee meetings are open unless otherwise indicated)*

### Senate

*Special Committee on Aging:* to hold hearings to examine long-term care in the health industry, 10 a.m., SD–628.

*Committee on Environment and Public Works:* business meeting to consider pending calendar business, 9:30 a.m., SD–406.

*Committee on Foreign Relations:* to continue hearings to examine Iraq, 10:30 a.m., SD–419.

Full Committee, to continue hearings to examine Iraq, 2:30 p.m., SD–419.

*Committee on Health, Education, Labor, and Pensions:* to hold hearings to examine the benefits and challenges of web-based education, 10 a.m., SD–430.

*Committee on Indian Affairs:* to hold oversight hearings on intra-tribal leadership disputes and tribal governance, 10 a.m., SR–485.

*Select Committee on Intelligence:* to resume joint hearings with the House Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001, 10 a.m., SH–216.

*Committee on the Judiciary:* to hold hearings to examine the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit; the nomination of Stanley R. Chesler, to be

United States District Judge for the District of New Jersey; the nomination of Daniel L. Hovland, to be United States District Judge for the District of North Dakota; the nomination of James E. Kinkeade, to be United States District Judge for the Northern District of Texas; the nomination of Linda R. Reade, to be United States District Judge for the Northern District of Iowa; and the nomination of Freda L. Wolfson, to be United States District Judge for the District of New Jersey, 10 a.m., SD–106.

## House

*Committee on Agriculture,* Subcommittee on Specialty Crops and Foreign Agriculture, hearing to Review Tobacco Buyout Proposals, 10 a.m., 1300 Longworth.

*Committee on Appropriations,* to mark up the following appropriations for fiscal year 2003: Transportation and the District of Columbia, 10 a.m., 2359 Rayburn.

*Committee on Armed Services,* to continue hearings on U.S. Policy towards Iraq, 9:30 a.m., 2118 Rayburn.

*Committee on Education and the Workforce,* Subcommittee on Employer-Employee Relations, hearing on ''Emerging Trends in Employment and Labor Law: Examining the Need for Greater Workplace Security and the Control of Workplace Violence,'' 10:30 a.m., 2175 Rayburn.

*Committee on Energy and Commerce,* Subcommittee on Commerce, Trade and Consumer Protection, hearing entitled ''State Impediments to E-Commerce: Consumer Protection or Veiled Protectionism?'' 10 a.m., 2322 Rayburn.

*Committee on Financial Services,* to consider H.R. 5400, to authorize the President of the United States of America to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, 10 a.m., 2128 Rayburn.

*Committee on Government Reform,* hearing on ''Attention Deficit/Hyperactivity Disorders—Are Children Being Overmedicated?'' 10 a.m., 2154 Rayburn.

*Committee on the Judiciary,* Subcommittee on Courts, the Internet, and Intellectual Property, oversight hearing on ''Piracy of Intellectual Property on Peer-to-Peer Networks,'' 9 a.m., 2141 Rayburn.

Subcommittee on Crime, Terrorism, and Homeland Security, hearing and markup of H.R. 5422, Child Abduction Prevention Act, 12 p.m., 2237 Rayburn.

*Committee on Resources,* Subcommittee on Fisheries Conservation, Wildlife and Oceans, hearing on H. Con. Res. 427, expressing the sense of the Congress regarding the imposition of sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic marlin adopted by the International Commission for the Conservation of Atlantic Tunas and that are threatening the continued viability of United States commercial and recreational fisheries, 2 p.m., 1324 Longworth.

*Committee on Transportation and Infrastructure,* Subcommittee on Highways and Transit, hearing on the Status of the Nation's Highway and Transit Systems: Capital and Maintenance Needs, 10 a.m., 2167 Rayburn.

*Committee on Veterans' Affairs,* Subcommittee on Oversight and Investigations, hearing on the Department of Veterans Affairs Information Technology (IT) program, 10 a.m., 334 Cannon.

*Committee on Ways and Means,* Subcommittee on Social Security, to continue hearings on Social Security Disability Programs Challenges and Opportunities, 11 a.m., B–318 Rayburn.

## Joint Meetings

*Conference:* meeting of conferees on H.R. 4, to enhance energy conservation, research and development and to provide for security and diversity in the energy supply for the American people, 9:30 a.m., 2123 RHOB.

*Joint Meetings:* Senate Select Committee on Intelligence, to resume joint hearings with the House Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001, 10 a.m., SH–216.

*Next Meeting of the* SENATE

9:15 a.m., Thursday, September 26

Senate Chamber

**Program for Thursday:** After the transaction of any morning business (not to extend beyond 11:15 a.m.), Senate will continue consideration of H.R. 5005, Homeland Security Act.

*Next Meeting of the* HOUSE OF REPRESENTATIVES

10 a.m., Thursday, September 26

House Chamber

**Program for Thursday:** Consideration of H.R. 4600, HEALTH Act (closed rule, one hour of general debate); and

Consideration of H.J. Res. 111, making continuing appropriations for the fiscal year 2003 (closed rule, one hour of general debate).

## Extensions of Remarks, as inserted in this issue

HOUSE

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