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Senate

AMBER LEGISLATION—

(Continued)

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Massachusetts retains the floor.

Mr. KENNEDY. Mr. President, I am going to send to the desk the underlying legislation which also strikes the provisions in title IV. It will limit them to the serious crimes against children. This is what was basically agreed to in the conference report, the AMBER legislation, and the provisions in that Feeney amendment that apply to children as was, I think, represented by the chairman of the Judiciary Committee.

I send the legislation of the committee to the desk and ask for its appropriate referral.

The PRESIDING OFFICER. Without objection, it is so ordered. The measure will be received and appropriately referred.

The Senator from Utah.

Mr. HATCH. Mr. President, I now renew any unanimous consent request, without losing my right to the floor, that we have 30 additional minutes of debate on the conference report, to be equally divided in the usual form, and that following that time, the Senate proceed to a vote on adoption of the conference report, with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I would like to speak for a few minutes on this bill, if I might.

Mr. HATCH. If the Senator will withhold, I will yield a few minutes to the Senator, but I first want to do this unanimous consent request.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

The Senator from Utah.

Mr. HATCH. Would the Chair explain what the parliamentary order is.

The PRESIDING OFFICER. There will now be up to 30 minutes of debate, evenly divided, on the conference report. At the expiration of the time, a vote will occur on the report, without any intervening action or debate.

Mr. HATCH. With that understanding then, I yield to the distinguished Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I must say I really think this is unfortunate. When Senator HUTCHISON and I proposed the AMBER alert in the last session and when Senator LEAHY was good enough to see that it passed through the committee very rapidly, the Senate voted on it, the House did not. This year Senator HATCH was good enough, as chairman, to see that it passed through the Judiciary Committee very rapidly. The Senate passed the bill. It went to the House, and it became confused in what is a rather monumental discussion.

I want to make a couple of comments on the AMBER alert bill, and then I want to make a few comments on the remainder of the bill.

More than any other single law enforcement tool, I deeply believe, as does Senator HUTCHISON, that the AMBER alert can result in an abducted child being brought home safely. We know it works, and we know it is a program that should be nationwide.

To date, in 39 States and 49 local and regional jurisdictions, there is an AMBER alert. This is up from 16 States and 32 local and regional jurisdictions just last August. These alerts have been extremely successful. They have resulted in the return of 53 abducted children across the country. Hallelujah. That is 53 families who did not have to suffer the pain of losing a loved one, 53 families who did not have to live through the trauma of losing a child, and that is why this legislation is so important. That is why I am going to vote for this bill.

The first hours after a child is taken are critical. If the child is not found in those first few hours, chances increase dramatically that he or she will disappear forever, and this is the power of the AMBER alert. An alert can be issued within minutes of an abduction and disseminate key information.

Since the State of California first adopted the AMBER alert just 9 months ago, 25 AMBER alerts have been issued involving 31 victims. Each of these alerts ended with the child being united with their family. One cannot argue with results like that.

The provision included in the conference report has a number of key components. It would authorize $20 million for the Department of Transportation and $5 million to the Department of Justice for the development of AMBER alert systems in States where they do not exist; it would build upon the President's Executive order by authorizing a national coordinator; and it would reduce the number of false alerts.

The bill would provide a framework for the Justice Department to establish minimum standards for the regional coordination of AMBER alerts. It is a good bill. We need it.

The report also includes several provisions similar to legislation that I sponsored, with Senator HATCH, which would enhance national efforts to investigate, prosecute, and prevent crimes against children. I really regret that these provisions have become enmeshed with other concerns over the conference report.

I heard Senator KENNEDY speak in the Judiciary Committee this morning. I have heard him speak on the floor this afternoon. I understand his concerns. I do not believe judges should have to report their sentences on child crime to the Congress of the United States. I think that is a mistake. It should not happen.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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With respect to Koon v. the United States, I think it is a mistake to let appellate courts change the standard of review. I hope the Judiciary Committee will consider these things in the future.

Let me state what is in the report that I agree with. It mandates that sex offenders be supervised for a minimum of 5 years after they are released from prison. I agree.

It ensures that the murder of a child committed as part of a pattern of assaulting or torturing a child is considered first-degree murder. I agree.

It increases the maximum and minimum penalties for anyone who sexually exploits a child. For first conviction, a maximum penalty is 30 years, increased from 20 years. And the minimum sentence is 15 years, increased from 10 years. I happen to agree.

It creates a mandatory minimum penalty for kidnapping of not less than 20 years. Some do not agree with mandatories. I understand that. I respect that. But in the instance of a child, I agree with mandatories.

It creates a crime with a maximum penalty of 30 years for a U.S. citizen traveling within or outside the United States to engage in illegal sexual conduct with children. I agree.

It requires a person convicted a second time of a Federal sex offense involving children to receive a penalty of life imprisonment unless a death sentence is imposed.

Now, if a person is going to be convicted of sexually abusing children twice, the question comes, should there be a third time? I have to say there shouldn't be a third time. I support this provision.

It makes it a crime to attempt international parental kidnapping. Currently, only actual parental kidnapping is illegal. The attempt should be illegal, as well. I support that.

It removes the statute of limitations for child abduction and sex crimes. I agree with that.

It creates a Federal crime with a 2-year maximum penalty for creating a domain name with the intent to deceive a person into viewing obscene material on the Internet. The maximum penalty is 4 years if the intent is to deceive a minor. I agree.

It creates a rebuttal presumption against bail for a person accused of raping or kidnapping a victim who was under 18.

It expands reporting requirements for missing children from 18 to 21 years. Current law requires a host of Federal agencies to report a case of a child under 18 who is missing to the National Crime Information Center. In this case, the age of a missing child for reporting purposes is increased to 21.

It provides more funding for the National Center for Missing and Exploited Children, increasing funding by $10 million in both fiscal years 2004 and 2005.

I wish it did not have to happen this way. I would have felt much better if we had a chance in the Judiciary Committee to hold the requisite decisions and debate this more fully. I am very hopeful those things which are very controversial—and there are a few in this bill—we will have an opportunity to hear further and amend, if necessary.

What is important is to get the AMBER alert established nationally. If we had been at this for a month or two, I would not feel the way I do today. But we passed this bill in this body in the last Congress. Yet here we are today. I wish it could be a clean bill. I wish it could be just AMBER alert, but I am very pleased and will support the passage of this legislation.

I yield the floor.

Mr. LEAHY. Mr. President, I am pleased that today we will finally pass into law a very important bill designed to protect children.

As an original cosponsor of the National AMBER Alert Network Act, S. 121, I have worked with my Senate colleagues to do all that we possibly can to speedily pass it into law. Twice now we rapidly passed our bill through the Senate on unanimous, bipartisan votes—last fall and again in January. Both times House leaders chose not to pass it, instead delaying its assured passage into law by using the bill as a ''sweetener'' for a package of other controversial provisions that the Senate has not previously considered. The Smart family—who credit the AMBER Alert for the safe return of Elizabeth—has repeatedly joined us to urge House leaders to promptly take up and pass our Senate bill.

Had House leaders opted to stand up and do what is right from the beginning, we would already have a nationwide AMBER Alert system in place to save our children's lives when they are abducted. We will never know how many children could have been saved by a nationwide AMBER Plan—if the House had simply passed our bill when the Senate did, I daresay the number of children rescued from their abductors and death would be much higher. Efforts to protect our children do not deserve to be used as pawns by groups who play politics by attaching it to more controversial measures.

That being said, I am pleased that AMBER Alert legislation is included in the conference report, as it will aid states in their fight against the disturbingly increasing trend of child abductions and their often tragic ends. Our plan will enhance the AMBER Alert system created after the 1996 kidnapping and murder of 9-year-old Amber Hagerman of Arlington, TX. Since 1996, AMBER Alerts have helped rescue 53 children from their abductors nationwide by using broadcasters, law enforcement officials, road signs and a variety of other tools to instantly disseminate information about child abductions.

Today 39 States have statewide AMBER Alert plans. Our AMBER Alert legislation included in the conference report will create voluntary standards that would help States determine the criteria for AMBER Alerts and for quickly disseminating official information during AMBER Alerts. A newly appointed coordinator within the Justice Department will oversee the communication network for abducted children, working with states, broadcasters, and law enforcement agencies to set up and supplement AMBER plans and responses.

Our plan will give law enforcement agencies a powerful tool, while providing flexibility for states to implement the alert system. States also need financial help to create effective Amber Alert systems, and this conference report creates two Federal grant programs to help States establish AMBER plans. One, administered by the Department of Transportation, will give States assistance creating Statewide notification and communications systems, including message boards and road signs to help in the recovery of abducted children. The other, administered by the Justice Department, will help States create communications plans with law enforcement agencies and the communities they serve. My State of Vermont does not yet have an AMBER Alert system, and law enforcement officials in Vermont have begun laying the groundwork for a system there. They welcome the Federal help our bill will offer to get a system up and running.

As a father and grandfather I know that an abducted child is a family's worst nightmare, and one that happens far too often. The families of children taken by strangers need our help, and they will get it with the passage of the AMBER Alert legislation.

The conference report we consider today includes another very important piece of legislation this one designed to protect children from being exploited by child pornographers. I should know because I helped to write this bill in the Senate. Indeed, I am the lead cosponsor of the Senate bill, S.151, which we sent over to the House with a vote of 84–0.

Ironically, the House and the conference committee have added so many extra controversial provisions to the conference report bill that one of its core elements, and the element that gives the conference report its title—the PROTECT Act—is buried near the end in Title V. Title V is largely the bill that Senator HATCH and I jointly crafted, held hearings on, and moved through the Senate as the PROTECT Act. I would like to discuss both the content and history of the provisions in this title of the conference reported bill.

When Senator HATCH and I introduced S. 151 in January, I supported passing a bill that was identical to the measure that we worked so hard to craft in the last Congress. That bill had passed the Judiciary Committee and the Senate unanimously in the 107th Congress. It did not become law last year because, even though the Senate

was still meeting, considering and passing legislation, the House of Representatives had adjourned and would not return to take action on this measure, which had passed the Senate unanimously, or to work out our differences.

As I said when we introduced the Hatch-Leahy PROTECT Act and again as the Judiciary Committee considered this measure, although this bill is not perfect, it is a good faith effort to provide powerful tools for prosecutors to deal with the problem of child pornography within constitutional limits. We failed to do that in the 1996 Child Pornography Protection Act (″CPPA″), a significant portion of which the Supreme Court struck down last year. We must not make the same mistake again. The last thing we want to do is to create years of legal limbo for our nation's children, after which the courts strike down yet another law as unconstitutional.

I also said at our Judiciary Committee markup and again when the Senate passed this bill unanimously that I hoped we could pass the bill in the same form as it unanimously passed in the last Congress. Unfortunately, my colleagues on the other side of the aisle and in the House have jointly decided not to follow this route. Despite this fact, I have continued to work with Senator HATCH to craft the strongest bill possible that will produce convictions that will stick under the Constitution.

I was also glad to learn that, after we passed the bill unanimously, the administration ''strongly supported'' the Senate version of the bill. However, the House still chose not to enact the Senate bill, instead adding numerous controversial provisions to it. That is a shame, because it was no easy feat to move a bill fraught with such constitutional difficulties as the PROTECT Act to the point where not a single Senator voted against it.

I want to take a moment to speak again about the history of this important bill and the joint effort that it took to get to this point. In May of 2002, I came to the Senate floor and joined Senator HATCH in introducing the PROTECT Act , after the Supreme Court's decision in Ashcroft v. Free Speech Coalition (″Free Speech″). Although there were some others who raised constitutional concerns about specific provisions in that bill, I believed that unlike legislative language proposed by the administration in the last Congress, it was a good faith effort to work within the first amendment.

Everyone in the Senate agrees that we should do all we can to protect our children from being victimized by child pornography. That would be an easy debate and vote. The more difficult thing is to write a law that will both do that and will produce convictions that stick. In 1996, when we passed the CPPA many warned us that certain provisions of that Act violated the first amendment. The Supreme Court's decision last year in Free Speech has proven them correct.

I believed and continue to believe that we should not sit by and do nothing. It is important that we respond to the Supreme Court's decision. It is just as important, however, that we avoid repeating our past mistakes. Unlike the CPPA, this time we must respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last, rather than one that will be stricken from the law books.

It is important that we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand first amendment scrutiny. We need a law with real bite, not one with false teeth.

After joining Senator HATCH in introducing the PROTECT Act in the 107th Congress, as Chairman of the Judiciary Committee in the last Congress, I convened a hearing on October 2, 2002 on the legislation. We heard from the Administration, from the National Center for Missing and Exploited Children, NCMEC, and from experts who came and told us that our bill, as introduced, would pass constitutional muster, but the House-passed bill supported by the administration would not.

I then placed the Hatch-Leahy PROTECT Act on the Judiciary Committee's calendar for the October 8, 2002, business meeting. I continued to work with Senator HATCH to improve the bill so that it could be quickly enacted. Unfortunately the Judiciary Committee was unable to consider it because of procedural maneuvering by my colleagues that had nothing to do with this important legislation.

I still wanted to get this bill done. That is why, for a full week last October, I worked to clear and have the full Senate pass a substitute to the bill that tracked the Hatch-Leahy proposed committee substitute in nearly every area.

Indeed, the substitute I offered even adopted parts of the House bill which would help NCMEC work with local and State law enforcement on these cases. Twice, I spoke on the Senate floor imploring that we approve such legislation. As I stated then, every single Democratic Senator cleared that measure. I then urged Republicans to work on their side of the aisle to clear this measure which was substantially similar to the joint Hatch-Leahy substitute so that we could swiftly enact a law that would pass constitutional muster. Unfortunately, they did not. Facing the recess before the mid-term elections, we were stymied again.

Even after the last election, during our lameduck session, I continued to work with Senator HATCH to pass this legislation in the Senate. As I had stated I would do prior to the election, I called a meeting of the Judiciary Committee on November 14, 2002. In the last meeting of the Judiciary Committee under my Chairmanship in the 107th Congress, I placed S. 2520, the Hatch-Leahy PROTECT Act, on the agenda yet again. At that meeting the Judiciary Committee amended and approved this legislation. We agreed on a substitute and to improvements in the victim shield provision that I authored.

I did not agree with certain of Senator HATCH's committee amendments because I thought that they risked having the bill declared unconstitutional. I nevertheless both called for the committee to approve the bill and voted for the bill in its amended form. That is the legislative process and it was followed for this portion of the bill. We studied and argued the issues. I compromised on some issues, and Senator HATCH compromised on others. Even though the bill was not exactly as either of us would have wished, we both worked fervently to seek its passage.

The same day as the bill unanimously passed the Judiciary Committee, I sought to gain the unanimous consent of the full Senate to pass the Hatch-Leahy PROTECT Act as reported, and I worked with Senator HATCH to clear the bill on both sides of the aisle. I am pleased that the Senate did pass the bill by unanimous consent. I want to thank Senator HATCH for all he did to help clear the bill for passage in the 107th Congress. Unfortunately, the House failed to act on this measure last year and the administration decided not to push for passage. If they had, we could have passed a bill, sent it to the President, and had a new law to protect children on the books months ago.

Instead, we were forced to repeat the entire process again, and we did it. I am glad to have been able to work hand-in-hand with Senator HATCH on the real ''PROTECT Act''—now Title V of the massive bill we are considering—because, it is a bill that gives prosecutors and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem. Let me outline some of the important provisions in Title 5 that I helped to write and move through the Senate.

I was glad that the House retained the Senate version of Section 503 of the bill, which created two new crimes aimed at people who distribute child pornography and those who use such material to entice children to do illegal acts. Each of these new crimes carries a 15-year maximum prison sentence for a first offense and double that term for repeat offenders. First, the bill criminalizes the pandering of child pornography, creating a new crime to respond to the Supreme Court's recent ruling striking down the CPPA's definition of pandering. This provision is narrower than the old pandering definition in at least one way that responds to a specific Court criticism. The new crime only applies to the people who actually pander the child pornography or solicit it, not to all those who possess the material ''downstream,'' and it

requires the government to demonstrate that the defendant acted with the specific intent that the material is believed to be child pornography.

The bill also contains a directive to the Sentencing Commission which asks it to distinguish between those who pander or distribute such material and those who only ''solicit'' the material. As with narcotics cases, distributors and producers are more culpable than users and should be more harshly punished for maximum deterrent effect. With the many problematic sentencing provisions that were included in the conference report, this provision that I crafted does it the correct way. It points out an important distinction between possessors and distributors but ultimately leaves it to the bipartisan commission to set the guidelines.

I would have liked for the pandering provision to be crafted more narrowly so that ''purported'' material was not included and so that all pandering prosecutions would be linked to ''obscenity'' doctrine. That is the way that Senator HATCH and I originally wrote and introduced this provision in the last Congress. Unfortunately, the Senate amendment process has resulted in some expansions to this once non-controversial provision that may subject it to a constitutional challenge. Thus, while it responds to some specific concerns raised by the Supreme Court, there are constitutional issues that the courts will have to seriously consider with respect to this provision. I will discuss these issues later.

Second, section 503 creates a new crime that I proposed to take direct aim at one of the chief evils of child pornography: namely, its use by sexual predators to entice minors either to engage in sexual activity or the production of more child pornography. This was one of the compelling arguments made by the government before the Supreme Court in support of the CPPA, but the Court rejected that argument as an insufficient basis to ban the production, distribution or possession of ''virtual'' child pornography. This bill addresses that same harm in a more targeted and narrowly tailored manner. It creates a new felony, which applies to both actual and virtual child pornography, for people who use such material to entice minors to participate in illegal activity. This will provide prosecutors a potent new tool to put away those who prey upon children using such pornography—whether the child pornography is virtual or not.

Next, this bill attempts to revamp the existing affirmative defense in child pornography cases both in response to criticisms of the Supreme Court and so that the defense does not erect unfair hurdles to the prosecution of cases involving real children. Responding directly to criticisms of the Court, the new affirmative defense applies equally to those who are charged with possessing child pornography and to those who actually produce it, a change from current law. It also allows, again responding to specific Supreme Court criticisms, for a defense that no actual children were used in the production of the child pornography—i.e. that it was made using computers.

The final bill includes the House provision on banning virtual and non-obscene child pornography, a provision that I have counseled against in both bills because it renders the bill weaker against constitutional attack. One addition to the bill that I helped to include is the inclusion of a definition of material as ''graphic'' in nature. Had that definition, which narrowed the field to hard core child pornography, been applied to the entire definition, the measure would have been much stronger against constitutional attack. By also including ''lascivious simulated'' material in the virtual porn definition, however, the conference report risks having the entire provision stricken.

At the same time, I was pleased the House agreed to accept the provision I authored that protects prosecutors from unfair surprise in the use of this affirmative defense by requiring that a defendant give advance notice of his intent to assert it, just as defendants are currently required to give if they plan to assert an alibi or insanity defense. As a former prosecutor I suggested this provision because it affects the real way that these important trials are conducted. With the provision, the government will have sufficient notice to marshal the expert testimony that may be needed to rebut this ''virtual porn'' defense in cases where real children were victimized.

This improved affirmative defense measure also provides important support for the constitutionality of much of this bill after the Free Speech decision. Even Justice Thomas specifically wrote that it would be a key factor for him. This is one reason for making the defense applicable to all non-obscene, child pornography, as defined in 18 U.S.C. 2256. In the bill's current form, however, the affirmative defense is not available in one of the new proposed classes of virtual child pornography, which would be found at 18 U.S.C. 2256(8)(C). This omission also may render that provision unconstitutional under the first amendment.

The bill also provides much needed assistance to prosecutors in rebutting a false ''virtual porn'' defense by removing a restriction on the use of records of performers portrayed in certain sexually explicit conduct that are required to be maintained under 18 U.S.C. 2257, and expanding such records to cover computer images. These records, which will be helpful in proving that the material in question is not ''virtual'' child pornography, may be used in federal child pornography and obscenity prosecutions under this act. The purpose of this provision is to protect real children from exploitation. It is important that prosecutors have access to this information in both child pornography and obscenity prosecutions, since the Supreme Court's recent decision has had the effect of narrowing the child pornography laws, making it more likely that the general obscenity statutes will be important tools in protecting children from exploitation. In addition, the Act raises the penalties for not keeping accurate records, further deterring the exploitation of minors and enhancing the reliability of the records.

Next, the Hatch-Leahy bill contains several provisions altering the definition of ''child pornography'' in response to the Free Speech case. One approach would have been simply to add an ''obscenity'' requirement to the child pornography definitions. Outlawing all obscene child pornography—real and virtual; minor and youthful-adult; simulated and real—would clearly pass a constitutional challenge because obscene speech enjoys no protection at all. Under the Miller obscenity test, such material—one, ''appeals to the prurient interest,'' two, is utterly ''offensive'' in any ''community,'' and three, has absolutely no serious ''literary, artistic or scientific value.''

Some new provisions of this bill do take this ''obscenity'' approach, like the new section 1466A, which I crafted with Senator HATCH. Other provisions, however, take a different approach. Specifically, the House virtual porn provision 2256(8) include persons who are ''indistinguishable'' from an actual minor. This adopts language from Justice O'Connor's concurrence in the Free Speech case. The problem with that is that Justice O'Connor was not the deciding vote in the Free Speech case, she was the seventh vote to strike down the law. Thus, while this language is defensible, I predict that this provision will be the center of much constitutional debate. Although I will explain in more detail later, these new definitional provisions risk crossing the constitutional line.

Title V, which was already in the unanimously passed Senate bill before the House saw fit to make the bill more controversial, itself contains a variety of other measures designed to increase jail sentences in cases where children are victimized by sexual predators. First, it enhances penalties for repeat offenders of child sex offenses by expanding the predicate crimes which trigger tough, mandatory minimum sentences. Second, the bill requires the U.S. Sentencing Commission to address a disturbing disparity in the current Sentencing Guidelines. The current sentences for a person who actually travels across State lines to have sex with a child are not as high as for child pornography. The commission needs to correct this oversight immediately, so that prosecutors can take these dangerous sexual predators off the street. These are all strong measures designed to protect children and increase prison sentences for child molesters and those who otherwise exploit children but—unlike the ill-considered Feeney and

Hatch-Sensenbrenner amendments—they are done the right way within the structure that Congress established under the Sentencing Reform Act of 1984.

Also retained from the original Hatch-Leahy PROTECT Act are several provisions designed to protect the children who are victims in these horrible cases. Privacy of the children must be paramount. It is important that they not be victimized yet again in the criminal process. This bill provides for the first time ever a provision that I suggested. It is an explicit shield law that prohibits the name or other nonphysical identifying information of the child victim, other than the age or approximate age, from being admitted at any child pornography trial. It is also intended that judges can and will take appropriate steps to ensure that such information as the child's name, address or other identifying information not be publicly disclosed during the pretrial phase of the case or at sentencing. The conference report also retained a Senate provision requiring the judge to instruct the jury, upon request of the government, that no inference should be drawn against the United States because of information inadmissible under the new shield law.

The conferees also voted to adopt a provision from the original Hatch-Leahy PROTECT Act that amended certain reporting provisions governing child pornography. Specifically, it allows Federal authorities to report information they receive from NCMEC to State and local police without a court order. In addition, the bill removes the restrictions under the Electronic Communications Privacy Act (ECPA) for reporting the contents of, and information pertaining to, a subscriber of stored electronic communications to NCMEC when a mandatory child porn report is filed with NCMEC pursuant to 42 U.S.C. 13032.

While this change may invite rogue Federal, State or local agents to try to circumvent all subpoena and court order requirements under ECPA and allow them to obtain subscriber emails and information by triggering the initial report to NCMEC themselves, it should be well understood that this is not the intention behind this provision. These important safeguards are not being altered in any way, and a deliberate use of the tip line by a government agent to circumvent the well established statutory requirements of these provisions would be a serious violation of the law. Nevertheless, we should still consider further clarification in the future to guard against subverting the safeguards in ECPA from government officials going on ''fishing expeditions'' for stored electronic communications under the rubric of child porn investigations.

As I made clear when the Senate bill was introduced and again when it passed the Senate, I continue to express my disappointment in the Department of Justice information sharing regulations related to NCMEC tip line. According to a recent Government Accounting Office (GAO) report, due to outdated turf mentalities, the Attorney General's regulations exclude both the United States Secret Service and the U.S. Postal Inspection Service from direct access to important tip line information. That is totally unacceptable, especially in the post 9–11 world, where the importance of information sharing is greater than ever. How can the Administration justify support of this provision, which allows state and local law enforcement officers such access, when they are simultaneously refusing to allow other federal law enforcement agencies access to the same information? I once more urge the Attorney General to end this unseemly turf battle and to issue regulations allowing both the Secret Service (now in the Department of Homeland Defense) and the Postal Inspection Service, both of whom perform valuable work in investigating these cases, to have access to this important information so that they can better protect our nation's children.

Section 506 of the conference report also adopted the Senate provision providing for extraterritorial jurisdiction where a defendant induces a child to engage in sexually explicit conduct outside the United States for the purposes of producing child pornography which they intend to transport to the United States. The provision is crafted to require the defendant to have the intent of actual transport of the material into the United States, unlike the House bill, which criminalized even an intent to make such material ''accessible.'' Under that overly broad wording, any material posted on a foreign web site could be covered, whether or not it was ever intended that the material be downloaded in the United States. Under the bill we consider today, however, proof of a specific intent to send such material to the United States is required.

Finally, Section 510 of the bill provides a new private right of action for the victims of child pornography that was part of the Senate bill. This provision has teeth, including injunctive relief and punitive damages that will help to put those who produce child pornography out of business for good. I commend Senator HATCH for his leadership on this provision and his recognition that such punitive damages provisions are important means of deterring misconduct. These provisions are important, practical tools to put child pornographers out of business for good and in jail where they belong. These are provisions that were in the Senate Hatch-Leahy bill and could have already been law had the House not chosen to hold them hostage to try to gain passage of the more controversial elements of the House package.

The committee process is there for a reason. It is there because it causes us to work together and improve bills as they go along. The Senate version of the PROTECT Act, much of which is included in the conference reported bill, is a prime example of the merits of that process. I only wish that other portions of this bill had been so considered. Let me explain.

As I mentioned previously, the Senate Hatch-Leahy PROTECT Act—most of which is now stuck in at the end of the bill—is a good faith effort to tackle the child pornography problem, and I have supported its passage from the outset. Until our conference, Senator HATCH and I worked closely together to make this bill as strong as possible. In fact, Senator HATCH and I were able to offer a joint amendment in the Judiciary Committee that strengthened the bill further against constitutional attack. Here are some of the improvements that we jointly made to the bill as introduced and which are in the final bill.

The Hatch-Leahy committee amendment created a new specific intent requirement in the pandering crime. The provision is now better focused on the true wrongdoers and requires that the government prove beyond a reasonable doubt that the defendant actually intended others to believe that the material in question is obscene child pornography. This is a positive step.

The Hatch-Leahy committee amendment narrowed the definition of ''sexually explicit conduct'' for prosecutions of computer created child pornography. Although I continue to have serious reservations about the constitutionality of prosecuting cases involving such ''virtual child pornography'' after the Supreme Court's decision in Free Speech Coalition v. Ashcroft, narrowing the definition of the conduct covered provides another argument that the provision is not as overbroad as the one in the CPPA. I had also proposed a change that contained an even better definition, in order to focus the provision to true ''hard core'' child pornography, and I was glad that this provision—relating to ''graphic'' pornography, was included in the final conference report.

The Hatch-Leahy committee amendment refined the definition of virtual child pornography in the provision that Senator HATCH and I worked together to craft last year, which will be a new 18 U.S.C. 1466A. These provisions rely to a large extent on obscenity doctrine, and thus are more rooted in the Constitution than other parts of the bill. I was pleased that the Hatch-Leahy amendments included a definition that the image be ''graphic''—that is, one where the genitalia are actually shown during the sex act—and that the House agreed to adopt this definition for the virtual porn provision as a whole for two reasons.

First, because the old law would have required proof of ''actual'' minors in cases with ''virtual'' pictures, I believe that this clarification will remove a potential contradiction from the new law which pornographers could have used to mount a defense.

Second, it will provide another argument supporting the law's constitutionality because the new provision is narrowly tailored to cover only the most ''hard core'' child pornography. If only we would have gone the extra step of requiring this level of obscenity for all virtual child pornography, I think the bill would be safe from constitutional challenge, instead of skating along the constitutional edge.

The Hatch-Leahy committee amendment also clarified that digital pictures are covered by the PROTECT Act, an important addition in today's world of digital cameras

and camcorders. I am glad that the final bill adopted that change.

These were important changes, and I was glad to work with Senator HATCH to craft them. It is unfortunate that this bipartisan cooperation did not extend to the controversial provisions that were added to the bill in the House and in the conference.

Even Title V of this law—the real PROTECT Act—is not perfect, however, and I would have liked to see some additional improvements to the bill. Let me outline some of them.

First, with regard to the tip line, I would have liked to further clarify that law enforcement agents may not and should not ''tickle the tip line'' to avoid the key protections of the Electronic Communications Privacy Act (ECPA). This might have included modifying 42 U.S.C. 13032 to clarify that the initial tip triggering the report may not be generated by the government's investigative agents themselves. A tip line to NCMEC is just that—a way for outsiders to report wrongdoing to NCMEC and the government, not for the government to generate a report to itself without following otherwise required lawful process. It was not the intent of any part of this bill to alter that purpose.

Second, regarding the affirmative defense, I would have liked to ensure that there is an affirmative defense for each new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made not using any child but only actual, identifiable adults. That will no doubt be a basis for attacking the constitutionality of this law. I specifically made this suggestion in conference negotiations but my Republican colleagues from both the House and the Senate refused to adopt a ''complete'' affirmative defense, instead leaving holes that will surely be raised in constitutional attacks on the bill.

As a general matter, it is worth repeating that we could have avoided all these problems were we to take the simple approach of outlawing ''obscene'' child pornography of all types, which we do in one new provision that I suggested and which is the new Section 1466A established in the conference report. That approach would produce a law beyond any possible challenge. This approach is also supported by NCMEC, which we all respect as the true expert in this field.

Following is an excerpt from NCMEC's answer to written questions submitted after our hearing, which I will place in the RECORD in its entirety:

Our view is that the vast majority (99–100%) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene. . . .

In the post Free Speech decision legal climate, the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Thus, according to NCMEC, the approach that is least likely to raise constitutional questions—using established obscenity law—is also an effective one. In short, the obscenity approach is the most narrowly tailored to prevent child pornography. New section 1466A adopts this obscenity approach, but because that is not the approach that other parts of the PROTECT Act uses, I recognize that it contains provisions about which some may have legitimate constitutional questions.

Specifically, in addition to the provisions that I have already discussed, there were two amendments adopted in the Judiciary Committee in the last Congress and one in this Congress to which I objected that are included in the bill as we consider it today. I felt and still feel that these alterations from the original language that Senator HATCH and I introduced needlessly risk a serious constitutional challenge to a bill that provided prosecutors the tools they needed to do their jobs. The bill would be even stronger than it is now were they changed. Let me discuss my opposition to these changes adopted by the Judiciary Committee in this Congress and the last.

Although I worked with Senator HATCH to write the new pandering provision in the PROTECT Act, I did not support two of Senator HATCH's amendments extending the provision to cover (1) ''purported'' material, and (2) material not linked to obscenity. Although our bill, unlike the House bill which had a pandering provision with no link to obscenity at all, had at least one provision which covered predominantly unprotected speech, it was needlessly altered in the legislative process and made vulnerable to attack.

First, during our markup in the last Congress I objected to an amendment from Senator HATCH to include ''purported'' material in the pandering provision. ''Purported'' material criminalizes speech even when there is no underlying material at all—whether obscene or non-obscene, virtual or real, child or adult. The pandering provision is an important tool for prosecutors to punish true child pornographers who for some technical reason are beyond the reach of the normal child porn distribution or production statutes. It is not meant to federally criminalize talking dirty over the internet or the telephone when the person never possesses any material at all. That is speech, and criminalizing it goes too far.

The original pandering provision in S. 2520 as introduced last Congress was quite broad, and some argued that it presented constitutional problems as written, but I thought that prosecutors needed a strong tool, so I supported Senator HATCH on that provision.

I was heartened that Professor Schauer of Harvard, a noted first amendment expert, testified at our hearing last year that he thought that the original provision was constitutional, barely. Unfortunately, Professor Schauer has since written to me stating that this new amendment to include ''purported'' material ''would push well over the constitutional edge a provision that is now up against the edge, but probably barely on the constitutional side of it.'' I placed his letter in the RECORD upon introduction of the bill in this Congress on January 13, 2003.

The second amendment to the pandering provision to which I objected expanded it to cover cases not linked in any way to obscenity. It would allow prosecution of anyone who ''presented'' a movie that was intended to cause another person to believe that it included a minor engaging in sexually explicit conduct, whether or not it was obscene and whether or not any real child was involved. Any person or movie theater that presented films like Traffic, Romeo and Juliet, and American Beauty would be guilty of a felony. The very point of these dramatic works is to cause a person to believe that something is true when in fact it is not. These were precisely the overbreadth concerns that led 7 justices of the Supreme Court to strike down parts of the 1996 Act. We do not want to put child porn convictions on hold while we wait another 6 years to see if the law will survive constitutional scrutiny.

Because these two changes endanger the entire pandering provision, because they are unwise, and because that section is already strong enough to prosecute those who peddle child pornography, I opposed those expansions of the provision which are in the bill we consider today. At least with those provisions, however, we debated and carefully considered alternatives. As I have said, with respect to other provisions in the bill the process has been fundamentally flawed.

Although I joined Senator HATCH in introducing this bill, even when it was introduced last year I expressed concern over certain provisions. One such provision was a new definition of ''identifiable minor.'' When the bill was introduced, I noted that this provision might both confuse the statute unnecessarily and endanger the already upheld ''morphing'' section of the CPPA. I said I was concerned that it could present both overbreadth and vagueness problems in a later constitutional challenge. Unfortunately, this provision remains problematic and susceptible to constitutional challenge. I was even more concerned with the House bill, which included 100 percent virtual child pornography from the start.

Unfortunately, as we consider the bill today, we have the House provision designed to cover ''virtual'' child pornography—that is, 100 percent computer generated pictures not involving any real children.

The ''identifiable minor'' provision in the current law may be used without

any link to obscenity doctrine. Therefore, what potentially saved the original version we introduced in the 107th Congress was that it applied to child porn made with real persons. The provision was designed to cover all sorts of images of real kids that are morphed or altered, but not something entirely made by computer, with no child involved.

The provision we now consider, however, dislodges, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated. That was not the original goal of the Senate provision.

There are other provisions in this bill that deal with obscene virtual child pornography that I support, such as those in new section 1466A, which are linked to obscenity doctrine. This provision, however, was intended to ease the prosecutor's burden in cases where images of real children were cleverly altered to avoid prosecution. By changing the Senate's identifiable minor provision into the House's virtual porn provision, the conference needlessly endangered its constitutionality.

For these reasons, I was glad to work in a bipartisan manner to shore up this provision in conference. Unfortunately, despite our best efforts, I fear we did not do everything possible to strengthen it against constitutional attack. Let me explain.

The new ''virtual'' porn provision in section 502 lumps together such truly ''hard core'' sexual activities such as intercourse, bestiality, and S&M with simple lascivious exhibition of the genitals and simulated intercourse where any part of a breast is shown. Equating such disparate types of conduct, however, does not mesh with community standards and is precisely the type of ''one size fits all'' approach that the Supreme Court rejected in the area of virtual pornography in the Free Speech case. The contrast between this broad definition and the tighter definition in new Section 1466A, crafted by Senator HATCH and myself, is striking. Although I was glad that we included the same definition of ''graphic'' conduct found in new section 502 as in Section 1466A, we have also left intact the less focused language that imperils the bill. The provision may be open to overbreadth attacks.

I am pleased that the conference addressed the vagueness concern in the new statute 2256(2) as it applies in virtual cases. By removing the requirement of ''actual'' conduct, we corrected the vagueness issue and have prevented clever defendants from seeking to argue that this new provision still requires proof ''actual'' sexual acts involving real children.

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, where it is obscene, or No. 2, where it involves real kids. That is the law as stated by the Supreme Court, whether or not we agree with it.

Senator HATCH and I agree that legislation in this area is important. But regardless of our personal views, any law must be within constitutional limits or it does no good at all. Section 502, which would include most ''virtual'' child pornography in the definition of child pornography, in my view, crosses the constitutional line and needlessly risks protracted litigation that could assist child pornographers in escaping punishment.

I supported passage of the original PROTECT Act as Senator HATCH and I introduced it and as it passed the Senate unanimously in the last Congress. Even so, I was willing to work with him to further amend the bill in the Judiciary Committee. Some amendments that we considered in committee I supported because they improved the bill. Others went too far. I had hoped the House would simply adopt the unanimously passed Senate bill and we would have already had a law on the books. Unfortunately, the House chose to proceed otherwise. Nevertheless I continued to work side by side with Republicans in conference to work through a variety of controversial and largely unrelated provisions. I wish I could say that my efforts have been reciprocated. One wonders whether everyone is placing the interests of our children first.

A media report on this legislation at the end of the last Congress reported the wide consensus that the Hatch-Leahy bill was more likely than the House bill to withstand scrutiny, but quoted a Republican House member as stating: ''Even if it comes back to Congress three times we will have created better legislation.''

To me, that makes no sense. Why not create the ''better legislation'' right now for today's children, instead of inviting more years of litigation and putting at risk any convictions obtained in the interim period before the Supreme Court again reviews the constitutionality of Congress' effort to address this serious problem? That is what the Senate passed version of the PROTECT Act sought to accomplish.

As I have explained, I believe that this issue is so important that I have been willing to compromise and to support a measure even though I do not agree with each and every provision that it contains. That is how legislation is normally passed. I am disappointed that the Administration and the House decided to play politics with this issue and add controversial positions that could bog the bill down.

There are a few additional measures in the conference report that I want to mention. First, Section 604 of the conference report, which was proposed by Senator GRASSLEY, amends Section 170101(e) of the Violent Crime Control and Law Enforcement Act of 1994. That section would amend several provisions of the sexual registry established under that law. First, it would add additional crimes to those that are included in the registry. Second, it would require that such registries be made available over the Internet. Finally, and quite significantly, this provision would not only require a ''process'' be established for contesting the accuracy of any information on the registry, but would also require that the instructions for following that process be readily available on the Internet. For the first time, then, we are explicitly requiring that there is a mechanism for those who believe that information has been erroneously posted on the registry to challenge that information and seek to have it removed.

Second, I want to thank the conferees for supporting measures included in the Protecting Our Children First Act, S. 773, a bipartisan bill that I introduced in both this Congress and the last, joined by Senators HATCH, KENNEDY, DEWINE, BIDEN, SHELBY, LINCOLN, and REID, to reauthorize the National Center for Missing and Exploited Children. As the nation's top resource center for child protection, NCMEC spearheads national efforts to locate and recover missing children and raises public awareness about ways to prevent child abduction, molestation, and sexual exploitation. NCMEC works to make our children safer by being a national voice and advocate for those too young to vote or speak up for their own rights.

We had proposed reauthorization through 2007 but have at least achieved agreement to extend its activities through 2005. We were able to double the grants from $10 million to $20 million a year so that the National Center can help more children and families. We also authorize the U.S. Secret Service to provide forensic and investigative assistance to the National Center, and we strengthen NCMEC's Cyber Tipline to provide online users an effective means of reporting Internet-related child sexual exploitation in distribution of child pornography, online enticement of children for sexual acts, and child prostitution.

Third, I am pleased that conferees agreed to include in the conference report Leahy-Kennedy-Biden legislation that will establish a transitional housing grant program within the Department of Justice to provide to victims of domestic violence, stalking, or sexual assault the necessary means to escape the cycle of violence.

Today, more than 50 percent of homeless individuals are women and children fleeing domestic violence. They are homeless because, in their desperate attempt to leave their abusers, they find themselves with few, if any, funds to support themselves. Shelters offer a short-term solution, but are often overcrowded and unable to provide all of the support that is needed. Transitional housing allows women to bridge the gap between escaping from a domestic violence situation and becoming fully self-sufficient. Such assistance is limited, however, because no federal funds exist for transitional housing programs geared specifically

to victims of domestic violence. We last authorized such a transitional housing grant program as part of the reauthorization of the Violence Against Women Act in 2000. This program would have been administered through the Department of Health and Human Services and would have provided $25 million in fiscal year 2001. Unfortunately, funds were never appropriated for the program, and the authorization expired.

If we truly seek an end to domestic violence, then transitional housing must be available to all those fleeing their abusers. First of all, such housing provides women and children a stable, sustainable home base. Second, it gives these victims opportunity to participate in educational programs, to work full-time jobs, to learn new job skills, and to search for adequate child care in order to gain self-sufficiency. Without such resources, many women and children eventually return to situations where they are abused or even killed.

This conference report amends the Violence Against Women Act of 1994 to authorize $30 million for each of fiscal years 2004–2008 for the Attorney General to award grants to organizations, States, units of local government, and Indian tribes to help victims of domestic violence, stalking, or sexual assault who need transitional housing or related assistance as a result of fleeing their abusers, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. Funds may be used for programs that provide short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses. The funds may also support services designed to help individuals locate and secure permanent housing. Lastly, these resources may be used to help integrate domestic violence victims into the community by providing services, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

This new grant program will make a significant impact in many areas of the country, such as my State of Vermont, where the availability of affordable housing is at an all-time low. There are many dedicated people working to provide victims of domestic violence with resources, but they can not work alone. We must provide women and children who have endured domestic violence with a safe place to gain the skills and stability needed to make the transition to independence. I thank the conferees for adding this language to the conference report and recognizing that this is an important component of reducing and preventing crimes that take place in domestic situations. Together, we can help the victims of these crimes to move on with their lives.

Fourth, I am pleased that the conference report includes a provision that I introduced in the last Congress to clarify that an airplane is a vehicle for purposes of terrorist and other violent acts against mass transportation systems. A significant question about this point was raised in an important criminal case and deserves our prompt attention.

On June 11, 2002, a U.S. District Judge in Boston dismissed one of the nine charges against Richard Reid stemming from his alleged attempt to detonate an explosive device in his shoe while onboard an international flight from Paris to Miami on December 22, 2001. The dismissed count charged defendant Reid with violating section 1993 of title 18, United States Code, by attempting to ''wreck, set fire to, and disable a mass transportation vehicle.''

Section 1993 is a new criminal law that was added, as section 801, to the USA PATRIOT Act to punish terrorist attacks and other acts of violence against, inter alia, a ''mass transportation'' vehicle or ferry, or against a passenger or employee of a mass transportation provider. I had urged that this provision be included in the final anti-terrorism law considered by the Congress. A similar provision was originally part of S. 2783, the ''21st Century Law Enforcement and Public Safety Act,'' that I introduced in the 106th Congress at the request of the Clinton Administration.

The district court rejected defendant Reid's arguments to dismiss the section 1993 charge on grounds that one, the penalty provision does not apply to an ''attempt'' and two, an airplane is not engaged in ''mass transportation.'' ''Mass transportation'' is defined in section 1993 by reference to the ''the meaning given to that term in section 5302(a)(7) of title 49, U.S.C., except that the term shall include schoolbus, charter and sightseeing transportation.'' Section 5302(a)(7), in turn, provides the following definition: ''mass transportation'' means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter or sightseeing transportation.'' The court explained that ''commercial aircraft transport large numbers of people every day'' and that the definition of ''mass transportation'' ''when read in an ordinary or natural way, encompasses aircraft of the kind at issue here.'' U.S. v. Reid, CR No. 02–10013, at p. 10, 12 (D. MA, June 11, 2002).

Defendant Reid also argued that the section 1993 charge should be dismissed because an airplane is not a ''vehicle.'' The court agreed, citing the fact that the term ''vehicle'' is not defined in section 1993 and that the Dictionary Act, 1 U.S.C. §4, narrowly defines ''vehicle'' to include ''every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.'' Emphasis in original opinion. Notwithstanding common parlance and other court decisions that have interpreted this Dictionary Act definition to encompass aircraft, the district court relied on the narrow definition to conclude that an aircraft is not a ''vehicle'' within the meaning of section 1993.

The new section 1993 was intended to provide broad Federal criminal jurisdiction over terrorist and violent acts against all mass transportation systems, including bus services, airplanes, railroads and other forms of transportation available for public carriage. The more inclusive definition would also cover cruise ships. Unfortunately terrorist attacks against Americans is not a new threat. In 1985, four terrorists brutally attacked the *Achille Lauro* Cruise Ship. The wheelchair-bound Leon Klinghoffer, a stroke victim, was shot once in the head and once in the back by the terrorists who then pushed him over the side of the ship into the Mediterranean.

Section 609 of the conference report adds a definition of ''vehicle'' to 18 USC 1993 and clarifies the breadth of the meaning of this term both in common parlance and under this new criminal law to protect mass transportation systems. Specifically, it defines this term to mean ''any carriage or other contrivance used, or capable of being used, as a means of transportation on land, water or through the air.''

Having reviewed all the positive elements of the conference report, I want to speak to the conference process itself. I am deeply disappointed by the process that characterized Tuesday's AMBER Alert and PROTECT Act conference. By taking bipartisan, noncontroversial bills and adding numerous controversial, unrelated measures, the Republicans have decided yet again to play games with important measures to protect our children. They are rolling the dice with the safety of America's children. I do not say this lightly, and I say it with a heavy heart, but House and Senate Republicans are now holding the passage of AMBER and the PROTECT Act hostage to these very troubling additions.

With respect to new matters never considered by this body, the conference committee in this matter tried no less a feat than to rewrite the criminal code on the back of an envelope. That type of effort is unwise and doomed to failure.

There are many things in this bill that I support—indeed as a former prosecutor I brought my personal experiences to bear and I wrote much of it. That is why even after the House Republicans loaded the bill with numerous controversial, unrelated provisions, I worked in good faith to come to agreement on many provisions. In fact, staff members of the conferees met all through the weekend and late into the early hours of Tuesday morning to find common ground. It is unfortunate that our good faith was repaid with attempts to add even more extraneous controversial provisions at the conference meeting.

Tuesday's conference, which was convened in the spirit of bipartisan cooperation, turned political, however,

when Republicans sprung a lengthy and complex amendment on the Democrats. This 9-page document was not a simple substitute for a portion of the bill. It was a highly complex amendment requiring careful consideration. The sponsors denied a request to break briefly in order to give conferees a moment to analyze the document. After meeting for three days in good faith, the Democratic conferees were effectively slapped in the face with a totally new proposal. Then, to add insult to injury, the sponsors of the amendment misrepresented its contents in the conference meeting and quickly forced a vote before the conferees had a chance to review or debate the amendment.

I was sorely disappointed by the way that this amendment was explained to the conferees. One sponsor said not once or twice, but three separate times: ''It's important to note that the compromise is limited to these serious crimes against children and sex crimes and does not broadly apply to other crimes.'' In fact, the amendment was not limited as he described, and did apply broadly to downward departures in sentencing for all Federal crimes.

After the conferees were forced to vote on the Hatch-Sensenbrenner amendment, Senator HATCH's office, at 2:00 a.m., substantially changed the text of his own amendment—the amendment that had already been voted upon in open conference. With no new meeting and no new vote of the conferees, the Republicans changed the conference report as it was voted on, and filed it in the House. The 2:00 a.m. text came closer to reflecting the original description of the amendment, but was still not limited, as was promised, to crimes against children.

The substance of the Hatch-Sensenbrenner amendment—whether in the form that was voted on in conference, or in the form that was circulated after the conference adjourned—is just as outrageous as the way in which it was adopted. This amendment modifies in very limited ways the Feeney amendment, which was added to the bill on the House floor after only 20 minutes of debate. This far-reaching proposal will undermine the Federal sentencing system and prevent judges from imposing just and responsible sentences. In short, it amounts to an attack on the Federal judiciary.

Speaking about the original Feeney amendment, Chief Justice Rehnquist wrote: ''this legislation, if enacted, would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences.'' In another bald mischaracterization of the Hatch-Sensenbrenner amendment, Senator HATCH claimed in the conference meeting that he had addressed the Chief Justice's concerns. He said, ''Chief Justice Rehnquist is worried about the breadth and scope of the Feeney Amendment. He's not worried about this [language]. I don't think any federal judge would worry about this language. They know this language is to protect our children in our society, and we're limiting it to that.'' In fact, the Hatch-Sensenbrenner amendment does not address the problems raised in Chief Justice Rehnquist's letter, which were directed at the assault on the sentencing structure that is retained in the amendment.

In addition to the Chief Justice of the United States, this is an issue on which we have heard from the Judicial Conference, other distinguished judges, the Sentencing Commission, the former chairmen of the Sentencing Commission, the American Bar Association, the Washington Legal Foundation, the Leadership Conference on Civil Rights, the Cato Institute, the National Petroleum Refiners Association and a number of other business associations, all of which opposed the House language.

Just this week, Justice Kennedy voiced grave concerns over the excessive application of mandatory minimum sentences. He said, ''When the guilt determination phase and the sentencing is over,'' Kennedy said, ''the legal system loses all interest in the prisoner. And this must change. Winston Churchill said a society is measured by how it treats the least deserving of its people. And two million people in prison in this country is just unacceptable.''

A number of the groups opposed to the original proposal have expressed continued opposition. Others have not had time to write about the new version because this proposal is being rushed through the legislative process.

The language that was adopted in the conference report establishes new and separate departure procedures for child-related and sex offenses. So, we will have one set of sentencing rules for pornographers and a more flexible set of sentencing rules for other Federal defendants, including terrorists, murderers, mobsters, civil rights violators, and white collar criminals. No one here believes that sex offenders deserve anything less than harsh sentences, but I cannot understand why we would treat the terrorists better.

The conference report also overturns a unanimous Supreme Court decision, Koon v. United States, by establishing a new standard of appellate review in all departure cases. This provision, like so many others, is not limited to cases involving children. The Court in Koon interpreted the departure standard in a way that limited departures but left some room for judicial discretion. By contrast, the new provision would appear to require appellate courts to consider the merits of a departure before it can decide what standard of review to apply to the merits. That is because, in order to determine which standard of review applies—''due deference'' or ''de novo''—the appellate court must first decide whether the departure advances the objectives of 18 USC 3553(a)(2) (incapacitation, deterrence, etc.) or is authorized under 18 USC 3553(b) (a mitigating circumstance of a kind, or to a degree, not adequately considered by the Sentencing Commission) or is justified by the facts of the case. This sloppily drafted, circular provision is likely to tie up the courts in endless litigation, draining already scarce judicial resources, and costing the taxpayers money.

The Republican supporters of this amendment seem to believe that our Federal judges cannot be trusted. I have always advocated doing a thorough review of our Federal judge nominees when they come before the Senate for lifetime appointments. Perhaps that is the difference between my view of Federal judges and those of my colleagues across the aisle who seem to believe they should rubber stamp the President's nominees to these lifetime positions. I believe we should pick our Federal judges carefully and them trust them once appointed, not rubber-stamp them and then feign disbelief when we are unhappy with their decisions.

The amendment effectively creates a judicial ''black list'' of judges that stray from the draconian mandates of this bill. The Hatch-Sensenbrenner language retains the Feeney amendment's attempt to intimidate Federal judges by compiling a ''hit list'' of all judges who impose sentences that the Justice Department does not like in any type of criminal case. It takes a sledge hammer to the concept of separation of powers.

In a further demonstration of hostility to our Federal judiciary as envisioned by our constitution, the Hatch-Sensenbrenner amendment removes almost all discretion for Federal judges to depart from the sentencing guidelines in some extraordinary cases.

At the conference's one meeting, during the brief period afforded for debate on the Hatch-Sensenbrenner amendment, I pointed out that the amendment retained language from the original Feeney amendment that eliminated the ability of Federal judges to depart and give lower sentences based upon extraordinary military service.

The sponsors of the amendment dismissed my concern. They said that I was wrong—that their amendment did not eliminate the departure for extraordinary military service. They were both quite certain on this point, even after I raised it a second time. One sponsor said, ''I don't know where you're getting your language from.'' Another assured us that ''this nine-page amendment has been very well drafted . . . It does exactly what we have said.''

After the conference had adjourned and they took the time to familiarize themselves with their own amendment, they discovered that I was correct. They were, in fact, eliminating the departure for extraordinary military service in all Federal criminal cases—for congressional medal of honor winners, for example, and veterans who

had been seriously wounded while defending their nation in battle. What is worse, they were doing this during a time of war, when future veterans are literally risking their lives for America. Realizing that this might not go down well on the floor of the United States Senate, they quietly dropped the provision from the final conference report.

I have discussed this issue at some length not to embarrass any member or his staff, but to make the point that Congress should spend more than a few minutes considering legislation with such far-reaching consequences. The conference report blithely overturns the basic structure of the carefully crafted guidelines system without any serious process in either the House or the Senate, and without any meaningful input from judges and practitioners.

With respect to the few parts of the Hatch-Sensenbrenner amendment that are limited to crimes against children, it may not be the end of the guidelines system, but it is very likely the beginning of the end. Once we prohibit judges from exercising discretion in one set of cases, we will have established a prototype for future attacks on the guidelines system—a form of ''mission creep'' in this uncompromising, anti-judge agenda. The same ''tough on crime'' political posturing that fuels the relentless drive for more mandatory minimums and death penalties will lead to future expansions of the Hatch-Sensenbrenner amendment to crimes having nothing to do with minors.

My Republican colleagues on the conference claim that there is a crisis on the Federal bench of downward departures in sentencing. In fact, downward departure rates are well below the range contemplated by Congress when it authorized the Sentencing Guidelines, except for departures requested by the government.

The overwhelming majority of downward departures are requested by Federal prosecutors to reward cooperation by defendants or to manage the high volume of immigration cases in certain border districts. When the government does not like a specific downward departure, it can appeal that decision, and it often wins—approximately 80 percent of such appeals are successful. This amendment is a solution in search of a problem.

Rather than rush to change the law with no factual basis for doing so, the Democrats in this conference asked for hearings on the topic. In fact, Senator GRAHAM, the new chairman of the newly constituted Crime, Corrections and Victims' Rights Subcommittee indicated that he planned to hold hearings on this topic very soon—that is, until the Feeney amendment and the subsequent Hatch-Sesenbrenner amendment overtook events. The Republican conferees now claim that no study is necessary. They believe that no hearings are necessary. They would rather significantly increase incarceration rates at taxpayer expense than take the time to determine whether such severe changes are necessary or appropriate.

The Hatch-Sensenbrenner amendment not only maintains the worst aspects of the controversial Feeney Amendment—provisions that have nothing to do with child protection—but also adds in new provisions that were not in the original Feeney amendment. For example, it limits the number of Federal judges who can serve on the Sentencing Commission because, as Chairman SENSENBRENNER explained, ''we don't want to have the Commission packed with Federal judges that have a genetic predisposition to hate any kind of sentencing guidelines.'' I, for one, believe that judges are extremely valuable members of the Commission. They bring years of highly relevant experience, not to mention reasoned judgment, to the table. The Republicans apparently believe that their knowledge is of limited value.

I find it ironic that the Republicans, in forcing through this measure, will undercut one of the signature achievements of Ronald Reagan's Presidency—a firm, tough, fair system of sentencing in the Federal criminal justice system. The Sentencing Reform Act of 1984 struck a balance between uniformity and judicial discretion and was enacted after years of study and consideration of the problems in the previous sentencing system. Congress understood that a guidelines system that encompasses every relevant sentencing factor is neither possible nor desirable. Departures, both upward and downward, are an integral and healthy part of the guideline system. They do not reflect an avoidance of the law by Federal judges but rather their conscientious compliance with the congressional mandate to impose a guideline sentence unless the court finds a circumstance not adequately considered by the Commission that warrants a departure.

Moving beyond the sentencing amendments offered at the conference, there are several provisions of the conference report that are equally problematic.

Section 106 of the conference report, entitled ''two strikes and you're out,'' is one of the many controversial provisions in the House-passed bill that have never been considered in the Senate. It mandates life imprisonment without parole for defendants who have twice been convicted of certain crimes against children.

Another section of the conference report creates several new mandatory minimum sentences, and raises some existing ones, for crimes involving child pornography and prostitution.

We can all agree that those who commit crimes against children should be severely punished. In fact, the bill that Senator HATCH and I authored—the real PROTECT Act, which is buried in title V of the conference report—contains a number of very strong sentencing provisions. But I believe we can accomplish our common goal of ensuring that those who prey on children receive tough punishment without further expanding the mandatory sentencing scheme that is gradually replacing the guidelines system.

The arguments against mandatory minimums are well known. The Chief Justice of the United States has observed that mandatory minimum sentences ''frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the Sentencing Guidelines were intended to accomplish.'' Another conservative member of the Court, Justice Kennedy, testified before a House subcommittee in 1994 that mandatory minimums were ''imprudent, unwise, and often an unjust mechanism for sentencing.'' As I mentioned previously, Justice Kennedy reiterated that thought just this week, before another House committee. Justice Breyer, who served on the original Sentencing Commission, has written that mandatory minimums prevent the Commission from developing a rational, coherent, and fair set of punishments. Most judges in the Federal system, Republicans and Democrats alike, agree with these criticisms.

Senator HATCH has also expressed reservations about statutory mandatory sentences. In a 1993 law review article, Senator HATCH observed that mandatory minimums are fundamentally inconsistent with the guidelines system. He wrote:

> Whereas the guidelines permit a degree of individualization in determining the appropriate sentence, mandatory minimums employ a relatively narrow approach under which the same sentence may be mandated for widely divergent cases. Whereas the guidelines provide for graduated increases in sentence severity for additional wrongdoing or for prior convictions, mandatory minimums often result in sharp variations in sentences based on what are often only minimal differences in criminal conduct or prior record. Finally, whereas the guidelines incorporate a ''real offense'' approach to sentencing, mandatory minimums are basically a ''charge-specific'' approach wherein the sentence is triggered only if the prosecutor chooses to charge the defendant with a certain offense or to allege certain facts.

Senator HATCH concluded that Congress should make greater use of the various alternative sentencing methods proposed by the Commission, including increased statutory maximums.

I am disappointed that Congress is poised, once again, to demonstrate that we are ''tough on crime'' by enacting new mandatory minimum sentences. That being said, I am pleased that the conference accepted my proposals to modify the two strikes provision to eliminate its harshest and most disproportionate applications. Among other things, the conference clarified that the ''two strikes'' law would not apply to a defendant whose only prior sex conviction was a misdemeanor under state law. The conference also provided a limited affirmative defense for defendants convicted under certain Federal statutes that have less culpable applications. Congress provided a

similar defense in the three strikes law, and it is appropriate that we included one here as well.

We should also have included in the two strikes provision a carve-out for Indian country. Unfortunately, the conference refused in a party line vote to allow Indian nations to decide for themselves whether or not to be part of the new two strikes regime.

There is no question that the two strikes law will disproportionately affect Indian country. Sentencing Commission data indicates that approximately 75 percent of cases to which the two strikes provision will be applied will involve Native Americans on reservations. Thus, the two strikes provision will have the effect of singling out Native Americans for harsher treatment.

Congress has confronted this problem before, when passing various criminal laws with particularly harsh sentences. In those situations, we have allowed the tribes to decide whether they want to be covered. The amendment that I offered, and that the Republican conferees rejected, was identical to provisions for Indian Country in current criminal statutes such as the ''three strikes'' law, the juvenile delinquency statute, and the Federal death penalty statute. These provisions preserve the sovereignty of the Indian tribes by providing their governing bodies with authority to control the laws affecting their land and people. For Congress to treat the ''two strikes'' provision differently is simply wrong.

Another provision of the conference report dealing with statutes of limitations raises concerns about the message we are sending to law enforcement. Section 202 extends the statute of limitations for certain crimes against children. This provision is substantially narrower than the version passed by the House, which covered a laundry list of crimes having nothing at all to do with children.

The purpose of section 202 is to address the problem—highlighted in several recent cases—of child victims who fail to notify authorities that they have been victimized until years and even decades after the event. Current law deals with this problem by allowing prosecution of certain offenses involving the abuse of a child until the child turns 25. Section 202 goes further, extending the limitations period for the entire life of the child.

During the conference, I expressed concern that section 202's lifetime extension of the limitations period would reduce law enforcement's incentive to move quickly and aggressively to solve these very serious crimes. I therefore proposed a modification along the lines that Congress adopted last year in the context of corporate fraud. More specifically, I proposed that a 3 or 5 year limitations period should exist, and start to run, once the facts constituting the offense were known, or reasonably should have been known, by Federal law enforcement authorities. This modification would have benefitted victims by requiring authorities to focus on their case, and to take immediate steps to bring the perpetrator to justice, as soon as the crime was brought to their attention. Senate Republicans fought for similar language in the Sarbanes-Oxley bill. Their opposition to it outside the context of corporate crime suggests a troubling double standard.

A final point on section 202: I am pleased that the conference agreed to drop language from the original House-passed bill that would have extended the limitations period retroactively. That language, which would have revived the government's authority to prosecute crimes that were previously time-barred, is of doubtful constitutionality. We are already pushing the constitutional envelope with respect to several of the ''virtual porn'' provisions in this bill. I am pleased that we are not doing so in section 202 as well.

The next section of the conference report is another example of hastily drafted language that has not been vetted thoroughly by either house of Congress. Section 203 adds certain crimes against children to the list of offenses that carry a rebuttable presumption against pre-trial release. Like the other provisions in titles I and II, this section has never been considered by the Senate, and received only the most cursory consideration by the House.

I have two problems with this provision. First, as with sentencing determinations, I believe that judges, not Congress, should determine who gets bail. Clearly, judges are in the better position to determine whether, for public safety reasons, an accused offender should be detained.

Second, I am concerned that the complete absence of legislative findings supporting the new presumption could imperil its constitutionality under the Excessive Bail Clause. At a minimum, it could give defendants a good argument that the presumption should be overcome more easily than the authors of this provision perhaps intended. That is what happens when we do not take the time to do things the right way.

For the same reason, I am troubled by section 521 of the conference report, which makes it a crime to use a ''misleading'' domain name with the intent to deceive a person into viewing obscenity on the Internet, or with the intent to deceive a minor into viewing ''material that is harmful to minors'' on the Internet. This provision is similar to section 108 of the House-passed bill, which was added as a floor amendment with no prior consideration in either body.

I have serious doubts about whether section 521 will survive constitutional challenge. For one thing, its failure to define the term ''misleading'' may unduly chill constitutionally-protected speech. For example, it is unclear whether a website like ''northernlights.com'' would be considered ''misleading'' if it contains images of naked persons that are deemed harmful to minors.

Section 521 does create a ''safe harbor'' for those who include the word ''porn'' or ''sex'' in their Internet domain name. This form of mandatory labeling of the site of a mainstream business, which includes material constitutionally protected as to adults, but which may be deemed inappropriate for some level of minors, also raises constitutional concerns. In addition, labeling domain names in this manner could turn sites into attractive nuisances, drawing more childrens' eyes to the site and thus having the opposite of its intended effect.

My uncertainty about the constitutionality of this provision is, of course, compounded by the fact that there is virtually no legislative record on it. It has never been introduced in the Senate, and received a grand total of 10 minutes of debate before being passed as a floor amendment in the House. And in case any judge is reading this and wondering, there was no discussion of this provision during the one afternoon that the conference committee actually met.

In recent years, Congress's efforts to regulate protected speech on the Internet have not fared well in the Supreme Court, which takes its responsibility to uphold the first amendment a bit more seriously than some of my Republican colleagues. It would not surprise me if the Court was especially dismissive of this current effort.

I am also concerned about the inclusion of the Illicit Drug Anti-Proliferation Act in this conference report. This bill has drawn serious grass-roots opposition, and I know that I am not alone in hearing from many constituents about their serious and well-considered objections to it. Despite this opposition, and even though the Senate has never held a hearing on this bill, the conference committee agreed to include it in this hastily-assembled package.

I know that Senator BIDEN has made changes to the bill since the last Congress, beginning with its title, and I appreciate his flexibility. But these changes do not address some of the questions that have been raised about this legislation.

The bill's primary purpose is to expand the existing ''crack house statute,'' (21 USC 856) which makes it unlawful to knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance, or to make a place available to someone else for use for such purposes or for storing a controlled substance. The bill would expand the statute to include those who lease, rent, or use property, including temporary occupants, and would allow for civil suits against violators.

The crack house statute has been on the books for more than 15 years, and for most of its existence, Federal prosecutors have used it solely against

property owners who have been directly involved in committing drug offenses. The House Judiciary Committee, however, heard evidence last year that the Drug Enforcement Administration and prosecutors are now using the ''crack house statute'' to pursue even business owners who take serious precautions to avoid drug use at their events. Business owners have come to Congress and told us there are only so many steps they can take to prevent any of the thousands of people who may attend a concert or a rave from using drugs, and they are worried about being held personally accountable for the illegal acts of others. Those concerns may well be overstated, but they deserve a fuller hearing.

In addition, the provision allowing civil suits dramatically increases the potential liability of business owners. Of course, this is a good thing when applied against those who are knowingly profiting from illegal drug use. But we have been told that even conscientious promoters may think twice before holding large concerts or other events where some drug use may be inevitable despite their best efforts. I do not know enough to know whether that claim is exaggerated, but I think we would have been well-served by making a greater effort to find out.

Finally, I want to speak on a very important piece of legislation that I attempted to add in conference. I am deeply disappointed that the Republican House and Senate conferees refused to include in the conference agreement the ''Hometown Heroes Survivors Benefits Act of 2003,'' tri-partisan legislation that I introduced earlier this year with ten cosponsors, including the lead Republican cosponsor Senator GRAHAM of South Carolina, who served as a member of this conference. This legislation would improve the Department of Justice's Public Safety Officers' Benefits (PSOB) program by allowing families of public safety officers who suffer fatal heart attacks or strokes to qualify for Federal survivor benefits.

Every year, hundreds of public safety officers nationwide lose their lives and thousands more are injured while performing duties that subject them to great physical risks. While we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes deserve our support for making the ultimate sacrifice.

The PSOB Program currently provides a one-time financial benefits payment to the families of law enforcement officers, firemen, emergency response squad members, and ambulance crew members who are killed in the line of duty. Unfortunately, PSOB guidelines do not allow survivors of public safety officer who die of a heart attack or stroke while acting in the line of duty to collect those benefits, ignoring the fact that service-connected heart conditions are silent killers of public safety officers nationwide.

I sought to include our tri-partisan bill in the conference report to fix the loophole in the PSOB program. This language would ensure that the survivors of public safety officers who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering incident while on duty—regardless of whether a traumatic injury is present at the time of the heart attack or stroke—are eligible to receive financial assistance. Representative ETHERIDGE and I introduced identical versions of this legislation last Congress, and the House bill passed that body, but an anonymous Republican hold in the Senate killed it.

I am saddened that the House and Republican conferees voted to strike Hometown Heroes from consideration by the conference. They squandered a chance to pass legislation to support our first responders and their families by striking it in a strict party line vote.

Public safety is dangerous, exhausting, and stressful work. A first responder's chances of suffering a heart attack or stroke greatly increase when he or she puts on heavy equipment and rushes into a burning building to fight a fire and save lives. The families of these brave public servants deserve to participate in the PSOB Program if their loved ones die of a heart attack or other cardiac-related ailment while selflessly protecting us from harm.

It is time for both the Senate and House to show their support and appreciation for these extraordinarily brave and heroic public safety officers by passing the Hometown Heroes Survivors Benefit Act.

Mr. President, I would like to take a moment to thank my staff for all their hard work on these provisions to protect our nation's children. I want to recognize Julie Katzman, Steve Dettelbach, Tara Magner, Ed Pagano, Phil Toomijian, Jessica Berry, Tim Lynch and Marguererite McConihe for their dedication to these important measures. Their diligence and professionalism do credit to this body.

I also wish to recognize the staff of the other Senate conferees for their hard work, including Robin Toone, Neil MacBride, Tonya Robinson, Eric Rosen, Chad Groover, Mike Volkov, Reed O'Connor, Wan Kim, James Galyean, and William Smith.

Finally, I wish to thank the staffs of the Democratic House conferees, including Perry Apelbaum, Bobby Vassar, Greg Branes, Ted Kalo, as well as Chairman SENSENBRENNER's professional staff, especially Will Moschella, Phil Kiko, Beth Sokul, Sean McLaughlin and Jay Apperson.

Mr. GRASSLEY. Mr. President, I rise today in support of the conference report on the PROTECT Act, S. 151. As a conferee on that Conference Committee, I proudly support this important bill. It is undoubtedly, one of the most significant and comprehensive pieces of legislation ever drafted to protect children. By marrying the AMBER alert bill with the Senate's PROTECT Act, and the House's Child Abduction Prevention Act, we will be ensuring a greater measure of protection for our children and greatly impacting their safety.

I am proud to have been a cosponsor of the Senate's version of the PROTECT Act. This portion of the conference bill does many important things. Because of advances in modern technology, prosecutors and experts are finding it more and more difficult to determine which images of child pornography are of real children and which are computer generated. This makes it very difficult to prove that an image is of a real child in a criminal case. To solve this problem, the bill makes it illegal to possess any material that contains a visual image of a minor engaging in sexually explicit conduct. Because child pornography, including morphed child pornography, is used to seduce children, the bill also makes it illegal to try to induce a child, through any means, including by computer, to participate in any activity that is illegal. The bill also makes any identifying information of a child, with the exception of age, inadmissible evidence in a court of law. Finally, to combat a grave problem that is growing worse daily, the bill requires the Attorney General to appoint 25 additional trial attorneys that would focus on the investigating and prosecuting Federal child pornography and obscenity laws.

Another important inclusion in this bill is the Public Outreach Title, which deals with the AMBER alert and the National Center for Missing and Exploited Children. The Senate Judiciary Committee heard very poignant testimony about how the AMBER alert, had it been available, could have been used to save young children, like Polly Klaas. We also heard testimony of how the California AMBER alert was successfully used to find two Lancaster teenagers, last summer. That hearing built a good record for why we need a nationally coordinated AMBER alert communications network. Additionally, the Public Outreach Title increase the support for the National Center for Missing and Exploited Children; gives the US Secret Service the authority to render investigative and forensic support to missing children; and creates a cyber tipline. This title will greatly enhance the ability of law enforcement to find our Nation's missing children.

While the bill makes significant progress in strengthening Federal child pornography laws and in enhancing public outreach, so that missing and exploited children can be recovered, the bill also includes the Houses' tough on crime penalties for Federal sex offenses. The bill increases penalties for crimes like kidnaping, sex tourism, child abuse, and child torture. It also includes a ''two-strikes'' provision that would establish a mandatory life sentence for twice convicted sex offenders.

This one provision alone will help keep some of the worst violent child molesters off the streets and out of the exploitation business. The bill also includes new rules for supervised release of sex offenders, so that criminals with deep-seated aberrant sexual tendencies will not just be released to the public without some measure of protecting the public once the criminal is let out of prison. Additionally, the bill removes the statute of limitations for sex crimes against minors. This provision will be particularly helpful in cases where there is old DNA evidence, but still no suspect. It is my hope that these new sanctions will have a tremendous deterrent impact, and when taken all together they will provide for greater security for America's most precious resource—it's children.

Although the underlying bill is an exceptional piece of legislation, I felt that there were a few additional provisions that would make the bill even better. I appreciate the way some members of the conference worked with me to include these additional provisions on the bill. First, I was able to get accepted an amendment to include child pornography manufacturers and distributors in the Federal sex offender registry. Because child pornography is a gateway to child molestation, just as marijuana is a gateway to harder drugs, those who deal in this type of material should be included in the offender registry, so that the public is on notice of these criminals.

I was also able to get approved a technical amendment to the Communications Decency Act. This amendment would conform the language of the CDA to the Supreme Court's decision in Reno v. ACLU, 521 U.S. 844 (1997). The amendment strikes the indecency provisions, which the court ruled were unconstitutionally vague, and limits the scope of the CDA to obscenity and child pornography, which can be restricted since they do not benefit from first amendment protection.

The conference also accepted two sense-of-Congress provisions. The first provision expresses that it is the sense of the Congress that the Child Exploitation and Obscenity Section of the Department of Justice should focus its investigative and prosecutorial efforts on major producers, distributors, and sellers of obscene material and child pornography that use misleading methods to market their material to children. This provision was recommended in the 2000 report of the COPA Commission, a congressional commission tasked with studying how to protect children from pornography online. The second provision, which is also taken from the COPA Commission report, expresses that it is the sense of the Congress that the online commercial adult industry should voluntarily refrain from placing obscenity, child pornography, or harmful-to-minors material on the front pages of their Web sites. By taking this step, these Web sites will be helping to protect minors from material that may negatively impact their social, moral, and psychological development.

With improved child pornography laws, enhanced public outreach, and tougher sentences for sex offenders who victimize minors, this conference report will be essential to keeping our children safe from individuals who wish to do them harm. I urge my colleagues to vote for the conference report on S. 151, The PROTECT Act.

Mr. BIDEN. Mr. President, I am pleased the Senate is considering the conference report to accompany S. 151, the Protect Act. As a member of the conference committee tasked with reconciling the differences between the House and Senate bills, I am gratified to see action being taken on this measure today. The conference report before us addresses one of the most important issues in America—protecting our kids from sexual and physical abuse. Enactment of this measure could literally save lives.

This bill will expand the nationwide AMBER Alert System to ensure maximum coordination between state and local law enforcement in their efforts to catch predators that kidnap kids. ''Amber alerts''—typically distributed through radio and television broadcasts and electronic highway signs—gained prominence after last summer's unfortunate and high-profile child abduction cases. These bulletins proved invaluable in their ability to disperse information about the missing children quickly and broadly—and they remain a critically important law enforcement tool.

The conference report that we consider today will expand and improve the program by establishing an AMBER Coordinator within the Department of Justice to enhance and centralize the operation of the communications system. It will establish minimum standards for coordination between various AMBER plans, particularly between state plans. And, perhaps most important, it will authorize two grants—one in the Department of Transportation to help sustain the AMBER alert programs themselves and a second in the Department of Justice to fund education, training, and related equipment. This common-sense legislation has been delayed far too long. We know that the AMBER Alert System helps save abducted children, and we should not let a single additional day pass before voting this measure into law. With this legislation, safeguards will soon be in place to protect children and their families.

The conference report also includes a negotiated version of the PROTECT Act, which this body unanimously adopted in February. The measure responds to last year's Supreme Court decision in Ashcroft v. Free Speech Coalition by writing a tough new child pornography law that, we hope, will allow prosecutors to go after those who traffic in child pornography—while not running afoul of the Court's first amendment holdings. Importantly, in addition to prohibiting the production and distribution of pornographic material depicting children, this bill achieves a range of other improvements to the law:

First, it strengthens penalties against repeat offenders. Second, it protects the privacy of children victimized by pornographers by preventing the introduction of any non-physical identifying information—like the child's name or social security number—into evidence at court. Third, it facilitates information-sharing between internet providers, who report incidents of child pornography and exploitation on their sites, and State law enforcement officers. And finally, it provides a civil remedy for victims of child pornography—including injunctive relief to stop immediately the bad conduct. These important improvements put children and their needs first. Is the legislation perfect? No. But it will move us substantially down the road to protecting out kids from predators, while preserving important first amendment principles.

I am pleased that several bipartisan proposals which I sponsored in the Senate will be included in this conference report. Like the AMBER Alert and child porn provisions, these additional initiatives will also protect our kids from child predators. I would like to take a moment to explain several of the provisions that I worked to see included in this conference report.

Section 108 establishes the Child Safety Pilot Program, an initiative that for the first time will permit groups like the Boys and Girls Clubs to apply directly to the Justice Department for background checks for their volunteers. It is a proposal that has been a long time in the making, and I am very pleased the conferees agreed to its adoption.

This section is drawn from legislation that I authored along with Senator Thurmond in the 107th Congress, the National Child Protection and Volunteers for Children Improvement Act. That bill passed the Senate unanimously but was not acted upon by the other body. I first raised concerns about the current state of background checks for volunteers in 2000 with the introduction of S. 3252. That bill and the bill that passed the Senate last year would have markedly simplified the current process for background checks for volunteers who work with kids.

Today, 87 million of our children are involved in activities provided by child and youth organizations which depend heavily on volunteers to deliver their services. Millions more elderly and disabled adults are served by public and private service organizations. Organizations across the country, like the Boys and Girls Clubs, often rely solely on volunteers to make these safe havens for kids a place where they can learn. The Boys and Girls Clubs and others don't just provide services to kids—their work reverberates throughout our communities, as the after-

school programs they provide help keep kids out of trouble. This is juvenile crime prevention at its best, and I salute the volunteers who help make these programs work.

Unfortunately, some of these volunteers come to their jobs with less than the best of intentions. According to the National Mentoring Partnership, between 1 and 7 percent of children in child care settings, foster homes and schools are sexually abused. Organizations have tried to weed out bad apples, and today most conduct background checks on applicants who seek to work with children. Regrettably, these checks can often take months to complete, can be expensive, and many organizations do not have access to the FBI's national fingerprint database. These time delays and scope limitations are dangerous: a prospective volunteer could pass a name-based background check in one state, only to have a past felony committed in another jurisdiction go undetected.

Effective December 20, 1993, the National Child Protection Act, NCPA, P.L. 103–209, encouraged States to adopt legislation to authorize a national criminal history background check to determine an employee's or volunteer's fitness to care for the safety and well-being of children. On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322) expanded the scope of the NCPA to include the elderly and individuals with disabilities.

As envisioned by Congress, the NCPA was to encourage states to have in effect national background check procedures that enable a ''qualified entity'' to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures permit this entity to ask an authorized state agency to request that the Attorney General run a nationwide criminal history background check on an applicant provider.

''Qualified entity'' is defined at 42 U.S.C. 5119c as ''a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services. . . .''

The authorized agency should access and review state and Federal criminal history records through the national criminal history background check system and make reasonable efforts to respond to an inquiry within 15 business days. Congress addressed this issue again in 1998 through enactment of the Volunteers for Children Act, Sections 221 and 222 of P.L. 105–251, ''VCA''. The VCA amended the NCPA to permit child care, elder care, and volunteer organizations to request background checks through state agencies in the absence of state laws implementing the NCPA.

Thus, the NCPA, as amended by the VCA, authorizes national fingerprint-based criminal history background checks of volunteers and employees (including applicants for employment) of qualified entities who provide care for children, the elderly, or individuals with disabilities, and those who have unsupervised access to such populations (regardless of employment or volunteer status), for the purpose of determining whether they have been convicted of crimes that bear upon their fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

Three years ago, organizations seeking to conduct background checks on their employees and volunteers made me aware of serious problems with the current background check system, problems that were jeopardizing the safety of children. Groups like the Boys and Girls Clubs of America alerted me that, despite the authorities provided in the NCPA and the VCA, national check requests were often delayed, in some jurisdictions they were never processed, and that the prohibitive costs of some of these checks were discouraging entities from seeking the reviews.

Under current law, whether they want a state or national criminal background check, organizations must apply through their state-authorized agency. The state agency then performs the state check and forwards the request to the FBI for a national check. The FBI responds back to the state agency, which then forwards the information back to the volunteer organization. In Delaware, the State Police Bureau of Identification works with groups to fingerprint prospective workers and check their backgrounds.

A patchwork of statutes and regulations govern background checks at the state level; there are currently over 1,200 State statutes concerning criminal record checks. This has led to widely different situations in each state: different agencies are authorized to perform the checks for different types of organizations, distinct forms and information are required, and the results are returned in various formats that can be difficult to interpret. States have not been consistent in their interpretation of the NCPA and VCA. Put simply, the current system is extremely cumbersome, particularly for those organizations that must check criminal records in multiple states, and for those groups employing seasonal workers, such as summer camps, for whom time is of the essence when seeking the results of background checks.

After careful study of this issue it became clear to me that the concerns of groups such as the National Mentoring Partnership and the Boys and Girls Clubs are not merely anecdotal. In 1998, the FBI's Criminal Justice Information Services, CJIS, Division performed an analysis of fingerprints submitted for civil applicants purposes. CJIS found that the average transmission time from the point of fingerprint to the state bureau was 51.0 days, and from the state bureau to the FBI was another 66.6 days, for a total of 117.6 days from fingerprinting to receipt by the FBI. The worst performing jurisdiction took 544.8 days from fingerprinting to receipt by the FBI. In a survey conducted by the National Mentoring Partnership, mentoring organizations on average waited 6 weeks for the results of a national criminal background check to be returned.

The danger these delays post to mentoring groups and others cannot be overstated. Suppose a group seeks to hire a volunteer who grew up in a neighboring jurisdiction to work with children. The group has the volunteer fingerprinted at their local police department, forwards those prints along to the agency designated by state statute or procedure to receive such requests, and then waits for the national results. FBI data indicates they will wait close to four months, on average, for the final results of the background check. That's too long. It forces groups to choose between taking a risk on someone's background, not making the hire at all, or seeking out only candidates from their jurisdiction for whom a full national background check may not be necessary.

Delay is not the only problem with the current system. The NCPA/VCA caps the fees the FBI can charge for national background checks at $24 for employees. For state fees, the NCPA/VCA requires States to ''establish fee systems that insure that fees to nonprofit entities for background checks do not discourage volunteers from participating in child care programs.'' In a survey of mentoring organizations, the National Mentoring Partnership found that organizations were paying on average $10 for a State records check, plus the fee for a national check. For organizations utilizing hundreds of volunteers and employees, the costs of conducting thorough background checks can be exorbitant. Small, community-based organizations with limited funding often must choose between funding services to children and checking the criminal history records of prospective volunteers.

Section 108 does three things. First, subsection (a)(2) establishes a State Pilot Program that will facilitate the ability of youth-serving organizations in three States designated by the Attorney General to check the backgrounds of their volunteers. The intent of this provision is for State Pilot Program to operate as the Congress intended the National Child Protection Act to operate. That is, youth-serving organizations who attempt to check the backgrounds of volunteers under this section shall be able to access the FBI's national criminal history database when necessary. The requesting process will go through the appropriate State agency. The State will review its criminal history records, and then forward the organization's request along to the FBI if a national check is required. Under 108(a)(2)(D), all criminal

history records will be provided to the State agency. The language in that section which reads ''consistent with the National Child Protection Act'' is intended to result in that State agency then making a determination of the potential volunteer's fitness to work with children. While (a)(2)(D) does permit the National Center for Missing and Exploited Children to access the criminal history records of the potential volunteer under (a)(2)'s State Pilot Program, it is my view that the Conferees intended this section result in fitness determinations being made by the appropriate State agency as under current law. Subsection (a)(2)(F) ensures that this determination will be provided to the organization in a timely fashion.

Second, subsection (a)(3) establishes a Child Safety Pilot Program. Under this subsection, three youth-serving organizations will be permitted to allocate a number of Federal background checks to their members or affiliates over an 18-month period. Current law does not permit these organizations to provide fingerprint cards directly to the FBI's criminal history records system in order to check the backgrounds of potential volunteers. This subsection changes that. Ninety days after the date of enactment of this conference report, the Attorney General will notify the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports that they have been statutorily designated to make 100,000 background check requests of the FBI. Allocations of these checks are set out in (a)(3)(C). The three eligible organizations may not accept fingerprint cards under this Pilot Program from any of their members or affiliates located in the three States designated by the Attorney General to participate in the State Pilot Program described in (a)(2). The organizations are required to obtain a signed statement from the potential volunteer along with the volunteer's fingerprints. Once the Attorney General receives fingerprint cards from the volunteer organizations, subsection (a)(3)(F) gives him 14 business days to provide any resulting criminal history records information to the National Center for Missing and Exploited Children. The Attorney General shall charge these three organizations no more than $18 to perform these checks. The National Center for Missing and Exploited Children will work with the three organizations to develop standards to determine how to evaluate the criminal history records information provided by the FBI, and to set standards to guide the fitness determination described in (a)(3)(G)(i). Nothing in this subsection requires the NCMEC to make such a fitness determination; the language of (a)(3)(G)(i) is discretionary. It is my view that the conferees intended this subsection to permit NCMEC to work with the eligible organizations in determining the fitness of prospective volunteers to work with children. However, it is my view that the conferees did not intend for NCMEC to perform this function unless adequate appropriations are allocated to it pursuant to subsection (c)(1). NCMEC shall not be liable for any fitness determination made pursuant to (a)(3)(G)(i), consistent with the limitation on liability set forth in section 305(a) of the conference report.

Third, subsection (d) requires the Attorney General to report to Congress on the implementation of the pilot programs at their conclusion, and to make legislative recommendations to Congress on whether the National child Protection Act requires amendments to ensure that organizations like those described in section 108 have access to prompt, effective, and affordable national criminal history background checks. It is important to point out that section 108 establishes only a pilot program for 100,00 checks. Members of the National Mentoring Partnership alone rely upon close to one million volunteers. The boys and Girls Clubs have close to 150,000 volunteers. Hundreds of thousands more volunteer with little leagues, soccer leagues, and other youth sports leagues affiliated with the National Council of Youth Sports. We should be doing more than establishing a pilot program, and I am disappointed the department of Justice continues to maintain that enactment of my legislation that passed the Senate last year, S. 1868, could overburden its fingerprinting infrastructure. Ensuring that those who volunteer to work with out kids in an investment that we should be willing to make. I intend to work to expand this Child Safety Pilot Program until ultimately all of those who want to access the FBI's criminal history records system are able to do so, consistent with the privacy protections provided by current law.

I thank Robbie Callaway and Steve Salem of the Boys and Girls Clubs of America for their strong support for my original bill and for this section would not be included in this conference report we take up today. Margo Pedroso of the National Mentoring Partnership has been extremely helpful to me and my staff in terms of educating Congress concerning the extent of the current problem, and I thank her and her organization for their support for this section. John Walsh with America's Most Wanted provided effective, timely advocacy for this provision and I am extremely grateful for his tireless commitment to protecting the Nation's children from criminals. I am also thankful for the efforts of Sally Cunningham of the National Council of Youth Sports for her organization's support for this program this year.

This bill also contains a provision I sponsored that reauthorizes Child Advocacy Centers. Child Advocacy Centers bring together law enforcement, prosecutors, child protective services and medical and mental health professionals to provide comprehensive, child-focused services to child victims of crimes. They provide immediate attention to young victims of sexual and physical abuse so that they are not ''twice abused,'' first by the perpetrator and second by a system which used to shuttle them from a medical clinic to a counseling center to the police station to the D.A.'s office.

Operating in all 50 states, Child Advocacy Centers served over 116,000 child victims last year. Of these victims, 26,934 received onsite medical exam, 27,684 received counseling and 69,443 went through a forensic interview process especially designed for children. Seventy-six percent of the children they serviced were under the age of 12. In Delaware, there are currently two operational Centers. Last year, Child Advocacy Centers in Delaware handled 1,000 cases where child victims as young as three alleged physical or sexual abuse.

Widely cited as an efficient, cost-effective mechanism of handling child abuse cases, Child Advocacy Centers are widely supported by police, prosecutors and the courts. Not surprisingly, communities with centers report increased successful prosecution of perpetrators, more consistent follow-up to child abuse reports, increased medical and mental health referrals for victims, and more compassionate support for child victims. It is also worth noting that in a May 1998 publication titled, New Directions from the Field, the Department of Justice included Children's Advocacy Centers as their number one recommendation for improving services to children who directly experience or witness violence—number one.

Mr. President, in 1994, this body passed the Violence Against Women Act, which I authored. This act made it clear that victims of domestic violence were victims in need of the full extent of this nation's medical and legal resources. My child advocacy provision is designed to bring this same type of concentrated focus, general awareness, and coordinated response to victims of child abuse

Section 607 is of the conference report includes my Secure Authentication Feature and Enhanced Identification Defense Act of 2003, also known as the ''SAFE ID'' Act. I would also like to thank Senator HATCH for joining me in introducing this legislation as a stand-alone bill and for helping to ensure that it became part of this conference report.

Mr. President, two of the terrorists who perpetrated the acts of 9/11 held false identification documents, which they purchased from a broker of false IDs. That broker was convicted under State law, but sentenced merely to probation. The judge and the prosecutor publicly lamented that the law did not subject such a person to harsher penalties.

These events focused new attention on an existing, growing problem—the ease with which individuals and organizations can forge and steal IDs and use

them to harm our society. These circumstances weaken our efforts in the fight against terrorism; identity theft; underage drinking and drunk driving; driver's license, passport and birth certificate fraud; even child abduction. In the post-9/11 era, we must do more to prevent the creation of false, misleading or inaccurate government IDs. This has become an issue of national importance and therefore merits a national response.

In recent years, the ability of criminals to produce authentic-looking fake IDs has grown immensely. Today, unfortunately, it is becoming increasingly common for criminals to either steal or forge, and traffic in, the very items that issuing authorities use to verify the authenticity of their IDs.

These ''authentication features'' are the holograms, watermarks, and other symbols, letters and codes used in identification documents to prove that they are authentic. Unfortunately, today ID's carrying authentication features can be purchased on the Internet or through mail order outfits. In addition, breeder documents, such as birth certificates, are desk-top published, with an illegitimate embossed or foil seal. Put another way, not only do crooks forge identification documents, they also now illegally fake or steal the very features issuing authorities use to fight that crime.

Under current law, it is not illegal to possess, traffic in, or use false or misleading authentication features whose purpose is to create fraudulent IDs. That is why I have authored the SAFE ID Act. The SAFE ID Act would prohibit the fraudulent use of authentication features in identity documents. Specifically, the SAFE ID Act adds authentication features to the list of items covered by an existing law prohibiting fraud and related activity in connection with identification documents. In addition, the act requires forfeiture of any violative items, such as false authentication features and relevant equipment.

The act defines ''authentication feature'' as ''any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.''

Holograms have long been used on credit cards, and are beginning to be deployed in identification documents. The term ''hologram'' is meant to include diffractive optical gratings and other optically variable devices, regardless of their manner of fixation to, or formation in, a document substrate.

Watermarks take a variety of forms including fabricated paper watermarks and digital watermarks. Watermarks have a long history of use as authentication features in paper, and were traditionally fabricated during the wet paper phase of the paper-making process by varying the thickness of paper fiber. Such conventional watermarks are now fabricated in a number of other ways, including chemical treatment. Generally, the watermark pattern—e.g., a logo—is revealed by viewing the document at an angel, or subject to certain illumination.

A second type of watermark is a digital code, sometimes referred to as a digital watermark. This code is secretly conveyed by an identification document using a number of steganographic technologies. In one, artwork on the document is altered in very slight respects to effect changes to the luminance, chromaticity, or reflectance at different locations across the artwork. This pattern is imperceptible to the human eye, but can be revealed by digitally scanning the document, examining the resulting data for these slight variations, and interpreting these variations to discern the digital code. The artwork encoded in this fashion can be a photograph, a logo—e.g., a seal of the issuing authority—or ornamentation—e.g., guilloche patterning. In other steganographic techniques, the background of the card is tinted with a subtle patterning, or a patterned texture is formed on the document. Again, such patterns are too slight to be recognized by human observers as conveying the digital watermark code, but the code can be discerned by scanning, and then analyzing the scan data.

This type of watermark finds application in detecting counterfeit, altered, and otherwise falsified documents in a number of different ways. For example, a photograph on a driver's license may steganographically convey a digital watermark code that identifies the issuing authority (e.g., the State of New Jersey). If the license is altered—by substituting a different photo—then analysis of the license will reveal the substitution because the photograph will not convey the expected digital code. Likewise, the blank stock on which driver's licenses are printed may convey, e.g., in a tint pattern, a digital code that identifies the issuing authority. If a suspect driver's license is found not to convey the expected code, it will be recognized as non-authentic.

In still other documents, the watermark can serve as a logical cross-check of other data or security features on the card. For example, the digital watermark code with which a driver's license is steganographically marked can convey a ''hash'' of the ASCII characters forming the lawful owner's name that is originally printed on the license. If the name on the license is altered, the hash resulting from that name will be different, and will not longer match the hash conveyed by the digital watermark code. Likewise, the birthdate printed on the license can be hashed and serve as the watermark. If the printed birthdate is altered, its hash will no longer match that conveyed by the steganographic encoding. By such arrangements, alteration of text and other elements of an identification document can readily be discerned by reference to digital watermarks.

Sometimes authentication features are used in the creation of so-called ''novelty IDs.'' These are documents that appear to be identification documents from recognized issuing authorities, but in fact are not. (An Internet search on the term reveals hundreds of web sites.) Sometimes such documents follow the exact layout of text, photo, and design elements used in authentic identity documents. However, such mimicry is not essential for such a ''novelty ID'' to be accepted as legitimate (e.g., a liquor store owner in California may not know what a genuine Vermont driver's license looks like). Such non-identical documents commonly make use of features that are relied upon by others in ascertaining the genuineness of an identification document. The definition of ''authentication feature'' thus embraces such features, and provisions elsewhere in the amended statute prohibit the use of such features on so-called ''novelty IDs.''

Subpart (4) extends the former statutory definition of ''false identification document'' from documents that are counterfeit ab inito, to also include documents that were originally issued lawfully, but subsequently altered for a purpose of deceit.

In like manner, subpart (5) makes clear that ''false identification document'' includes both features that were never genuine, but appear to be genuine, as well as features that originally were genuine but were subsequently (i) tampered with or altered for purposes of deceit; or (ii) diverted, or intended for diversion, without the authorization of the issuing authority.

Subpart (6) is amended to define ''issuing authority.'' This term includes ''quasi-governmental organizations,'' such as The Port Authority of New York and New Jersey, and governmentally chartered entities (e.g., the United States Postal System and the U.S. Federal Reserve System).

Mr. President, this section will give law enforcement officials a powerful tool to crack down on identity thieves. According to the U.S. Department of Justice, up to 700,000 people in the United States may be victimized by identity bandits each year, costing the average victim more than $1,000. Additionally, banks lost at least $1 billion to identity thieves last year. The SAFE ID Act will also go a long way toward combating the nationwide problem of underage drinking. Underage drinking is a serious problem with dangerous, and sometimes deadly consequences. The SAFE ID Act will help prevent underage drinking by making it harder for fraudulent criminals to provide young people with fake IDs. It perhaps goes without saying that legislation such as this, which makes it

harder to obtain fake IDs, will also make it harder for those who abduct innocent children to mask their identity and thereby avoid detection.

Mr. President, it is rare that we have before us legislation that would effectively address problems as disparate as homeland defense, identity theft, underage drinking, and child abduction. The SAFE ID Act would do just that, by cutting the legs out from under those who would misuse technology to mislead government authorities.

I am pleased that we were also able to include in the conference agreement the text of the Illicit Drug Anti-Proliferation Act, a bill which I introduced with Senator GRASSLEY in the Senate as S. 226, and that Representatives COBLE and SMITH introduced in the House of Representatives.

This legislation arose out of a series of hearings Senator GRASSLEY and I held in the Senate Caucus on International Narcotics Control on the risk that the so-called ''club drug'' Ecstasy poses to young people and the predatory behavior of some promoters of all-night dance parties—known as ''raves''—in distributing the drug to them.

The bill provides federal prosecutors the tools needed to combat the manufacture, distribution or use of any controlled substance at any venue whose purpose is to engage in illegal narcotics activity.

Rather than create a new law, it merely amends a well-established statute to make clear that anyone who knowingly and intentionally uses their property—or allows another person to use their property—for the purpose of distributing or manufacturing or using illegal drugs can be held accountable, regardless of whether the drug use is ongoing or occurs at a single event.

The bill is aimed at the defendant's predatory behavior, regardless of the type of drug or the particular place in which it is being used or distributed. One problem that we are facing currently involves so-called ''club drugs'' and raves. According to the Partnership for a Drug Free America, teens who report attending a rave are seven times more likely to have tried Ecstasy than teens who report not attending a rave. I find this statistic quite troubling and I hope that the changes made by the conference report before us today will make promoters think twice before endangering kids in this manner.

Despite the conventional wisdom that Ecstasy and other club drugs are ''no big deal,'' a view that even the New York Times magazine espoused in a cover story, these drugs can have serious consequences, and can even be fatal. Earlier this year we got some encouraging news: after years of steady increase, Ecstasy use is finally beginning to decrease among teens. That said, the rate of use remains unacceptably high and we still have quite a bit of work to do to counter the widespread misconception that Ecstasy is harmless, fashionable and hip.

At a 2001 Drug Caucus hearing, witnesses testified that rogue rave organizers commonly go to great lengths to portray their events as safe so that parents will allow their kids to attend. But the truth is that some of these raves are drug dens where use of Ecstasy and other ''club drugs''—such as the date rape drugs Rohypnol, GHB and Ketamine—is widespread.

We know that there will always be certain people who will bring drugs into musical or other events and use them without the knowledge or permission of the promoter or club owner. This is not the type of activity that my bill would address. My bill would help in the prosecution of rogue promoters who not only know that there is drug use at their event but also hold the event for the purpose of illegal drug use or distribution. That is quite a high bar. The coalition of Licensed Beverage Associations and the International Association of Assembly Managers, who initially expressed concerns that my bill would make their members liable for the actions of their patrons, have endorsed my legislation because they realized that my bill was not aimed at responsible party promoters.

I am confident that the overwhelming majority of promoters are decent, law abiding people who are going to discourage drug use—or any other illegal activity—at their venues. But there are a few promoters out there who are taking steps to profit from drug activity at their events. Some of these folks distribute drugs themselves or have their staff distribute drugs, get kickbacks from drug sales, have thinly veiled drug messages on their promotional flyers, tell security to ignore drug use or sales, or send patients who need medical attention to a hospital across town so that people won't link emergency room visits with their club.

My bill has met fierce resistance from a number of groups who have not felt the need to be constrained by the facts. Earlier this week the Drug Policy Alliance, a group whose goal is to end criminal penalties for marijuana, sent out an alert to get people to call their Senators and Representatives to register their disapproval of my bill. The background information they provided on the issue discussed my bill interchangeably with a House bill that I have never had any association with, have never supported, and was not being discussed by the conference committee. Rather than quoting the legal standard in my bill—which makes clear that an individual would have to knowingly maintain a place for the purpose of drug use—the Drug Policy Alliance chose to quote from the House bill that (1) has a legal standard—that the individual ''knows or reasonably ought to know'' that a controlled substance will be used at their event—that is far lower than that in my bill and (2) is specifically targeted at raves and promoters. What is more, on their web site, the Drug Policy Alliance makes the outlandish claim that:

The ''RAVE'' Act threatens free speech and musical expression while placing at risk any hotel/motel owner, concern promoter, event organizer, nightclub owner or arena/stadium owner for the drug violations of 3rd parties—real or alleged—even if the event promoter and/or property owner made a good-faith effort to keep their event drug-free. It applies not just to electronic-music parties, but any type of public gathering, including theatrical productions, rock concerns, DJ nights at local bars, and potentially even political rallies. Moreover, it gives heightened powers and discretion to prosecutors, who may use it to target events they personally don't like—such as Hip-Hop events and gay and lesbian fundraisers.

The law that my bill amends, 21 U.S.C. 856, has been on the book for nearly two decades and I am unaware of it ever being used to prosecute a legitimate business. My bill would not change that fact.

The reason that I introduced this bill was not to ban dancing, kill the ''rave scene'' or silence electronic music—all things of which I have been accused. Although this legislation grew out of testimony I heard at a number of hearings about the problems identified at raves, the criminal and civil penalties in the bill would also apply to people who promoted any type of event for the purpose of drug use or distribution. If rave promoters and sponsors operate such events as they are so often advertised—as places for people to come dance in a safe, drug-free environment—then they have nothing to fear from this law. In no way is this bill aimed at stifling any type of music or expression—it is only trying to deter illicit drug use and protect kids.

Again, I am glad that this measure was included in the conference report. I believe it is a fitting addition to a bill whose purpose is to protect children.

I am pleased that we were also able to include in the conference agreement section 10 of S. 152, the ''DNA Sexual Assault Justice Act of 2003,'' a bill which I introduced with Senators SPECTER, CANTWELL and CLINTON, along with 20 bipartisan cosponsors, in the Senate and that Representatives GREEN and MALONEY introduced in the House of Representatives. This bill unanimously passed the Senate in the 107th Congress as S. 2513.

Section 611 would amend Title 18 to encourage federal prosecutors to bring ''John Doe/DNA indictments'' in federal sex crimes. Specifically, the provision amends 18 U.S.C. §3282 to authorize explicitly federal prosecutors to issue an indictment identifying an unknown defendant by this DNA profile within the 5-year statute of limitations. If the indictment is issued within the 5-year statute of limitations, the statute is then tolled until the perpetrator is identified through his or her DNA profile at a later date. The John

Doe/DNA indictment would permit prosecution at anytime once there was a DNA ''cold hit'' through the national DNA database system.

While the Justice Department is permitted currently to bring John Doe/DNA indictments under Rule 7 of the Federal Rules of Criminal Procedure, see, e.g., *United States* v. *Fawcett*, 115 F.2d 764, 767 (3d Cir. 1940) (an indictment is an accusation against a person, not against a name, and hence the name is not of the substance of the indictment), they have not been frequently used in federal sex offenses. Accordingly, section 611 in no way should be construed, by negative implication, as suggesting that a DNA profile is the only alternative method of identification in criminal indictments.

Joe Doe/DNA indictment strike the right balance between encouraging swift and efficient investigations, recognizing the durability and credibility of DNA evidence and preventing an injustice if a cold hit happens years after the crime if law enforcement did not promptly process forensic evidence. Providing incentives for law enforcement to test quickly crime scene DNA from sexual assaults will also help identify sex offenders (who are often recidivists) to permit their speedy apprehension and prosecution.

In conclusion, Mr. President, this conference report will do a lot to protect our kids. I commend the Chairman of the Judiciary committee Senator HATCH for his efforts. Our ranking member Senator LEAHY dedicated himself to passing a meaningful Amber Alert bill. The staffs of the Senate and House Judiciary Committees worked long hours to get us to this point today. I am especially grateful for the efforts of Makan Delrahim, Mike Volkov, Reed O'Connor and Jennifer Wagner of Senator HATCH's staff. Thanks also to Bruce Cohen, Ed Pagano, Julie Katzman, Steve Dettelbach, Tim Lynch, Tara Magnere and Jessica Berry of Senator LEAHY's staff. The majority and minority staffs of the House Judiciary Committee worked equally hard to produce this conference report. I am appreciative of the efforts of Phil Kiko, Steve Pinkos, Will Moschella, Jap Apperson, Sean McLaughlin, Beth Sokul and Katy Crooks of Congressman SENSENBRENNER's staff. Also I would like to thank Ted Kalo with Congressman CONYERS and Bobby Vassar and Greg Barnes with Congressman SCOTT for their working during the conference committee.

Finally, and most importantly, I thank my Judiciary Committee staff for their efforts on behalf of this conference report. Neil MacBride, Eric Rosen, Tonya Robinson, Marcia Lee, Jonathan Meyer, Louisa Terrell and my very able law clerk Tracy Carney each ensured that many of my legislative priorities were included in this conference report and in so doing they helped to ensure our kids will be safer tomorrow then they are today. I urge my colleagues to vote in favor of the conference report.

Mr. LEVIN. Mr. President, I am deeply concerned about sentencing-related provisions included in the legislation now under consideration. The bill which the Senate passed in February of this year addressed an important issue—on which their was unanimous bipartisan agreement—of cracking down on child pornography. While I am pleased that the bill before us retains the provisions of that bill, it also proposes wholesale, and in my view unwise, changes to procedures for judicial departures from the sentencing guidelines in criminal cases.

The bill before the Senate contains a provision requiring de novo review of all sentencing departure cases appealed to the circuit courts. This provision overturns, without there having been any State debate on the issue, the interpretation of the ''due-deference'' standard for review of district court sentencing decisions contained in the Supreme Court's 1996 decision in Koon v. United States. In that case, the Court said:

> We agree that Congress was concerned about sentencing disparities, but we are just as convinced that Congress did not intend, by establishing limited appellate review, to vest in appellate courts wide ranging authority over district court sentencing decisions. Indeed, the text of section 3742 manifests an intent that district courts retain much of their traditional sentencing discretion. Section 3742(e), as enacted in 1984, provided ''[t]he court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous.'' In 1988, Congress amended the statute to impose the additional requirement that courts of appeals ''give due deference to the district court's application of the guidelines to the facts . . .

The bill also threatens to chill the use of judicial discretion to depart from the sentencing guidelines by imposing burdensome reporting requirements on judges who depart. Further, it requires the Attorney General to provide both the House and Senate Judiciary Committees with a report containing information—including the identity of the district court judge—on every downward departure in any case. The Judicial Conference of the United States has said, in an April 3, 2003, letter to Senator HATCH:

> We oppose the systematic dissemination outside the court system of judge-identifying information in criminal case files. . . . We urge Congress to meet its responsibility to oversee the functioning of the criminal justice system through the use of this and other information without subjecting individual judges to the risk of unfair criticism in isolated cases where the record may not fully reflect the events leading up to and informing the judge's decision in a particular case.

Surely we should hear from the Judicial Conference which has some serious concerns about the impact of this provision on judicial decisionmaking.

The bill could also have the effect of dramatically altering the composition of the U.S. Sentencing Commission. The Sentencing Commission consists of seven members. Under current law, at least three of it members must be Federal judges selected by the President from a list of six judges submitted by the Judicial Conference. By removing the requirement that judges hold at least three of the seven seats on the Sentencing Commission, the bill threatens the integrity and future good judgement of the Commission. I do not believe that this is a wise change because judges have a unique perspective on the issue of criminal sentencing.

These are just a few among the many troublesome provisions that were inserted into a piece of legislation after its passage in the Senate had enjoyed broad bipartisan support. The Senate has not had the opportunity to consider the potential impact of these provisions through either hearings or floor debate. Mr. President, I am disappointed that they are now being considered in a conference report which we will not have opportunity to amend.

Mr. DODD. Mr. President, I rise today to speak about the CARE Act which is an important piece of legislation that was passed yesterday. The CARE Act will help thousands of charitable organizations across the country perform the important work that they do every day on behalf of people and causes that need and deserve our assistance.

Every day in America, men and women and sometimes children—working and volunteering under the auspices of countless charitable organizations—feed hungry children, provide hot meals and home visits to senior citizens, clean our parks and lakes and rivers, care for neglected and abused animals, and provide clothes, food, and shelter for the homeless and mentally ill. These activities take place each day despite great costs to workers and volunteers in terms of time and resources.

I would daresay that were this bill not to become law, volunteers and charitable organizations around the country would be no less committed and dedicated to their work. But because we have passed this legislation and because this legislation or a reasonable facsimile thereof will hopefully become law in the near future, it is my belief that the work performed by charitable organizations and volunteers throughout America will be supported, strengthened, and expanded upon for years to come.

One of the most important provisions in this bill will allow those who do not itemize their deductions to receive a tax deduction for their charitable contributions. This deduction will benefit millions of low and middle-income families who are already making significant charitable contributions each year, and it will encourage even more charitable contributions in future years.

This bill also authorizes preferential treatment of gifts made from IRAs. This provision is important to many

major charities and universities throughout our Nation.

I am also very pleased that the CARE Act restores funding for the Social Services Block Grant. The social services block grant pays for critical services for millions of children, families, seniors, and persons with disabilities each year. Congress has been ignoring its responsibility to those in need for too long. Since 1995, annual funding for SSBG has been cut by more than $1 billion, from a high of $2.8 billion to the current level of $1.7 billion. This bill will restore the amount to $2.8 billion in the next fiscal year which is especially important now since we are seeing States across America cut and sometimes even eliminate the very services that SSBG was enacted to support because of the budget deficits they are currently faced with.

I do not believe it is an exaggeration to say that, if you want to know what America is all about, visit one of America's charities. There you will find the American spirit burning brightly. It is a spirit of compassion, selflessness, equal opportunity, and initiative. Those are the values that have made our Nation great. Those are the values that are nurtured each and every day in these organizations. And those are the values that will be given new strength and potency by this legislation.

I commend those of our colleagues who have worked hard to bring this legislation to the floor today. And I look forward to continuing to work with them in the days to come to enact it into law.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of the distinguished Senator from California. There is no question she and the distinguished Senator from Texas have been major movers of this legislation and she has been a strong supporter of the bill that this is attached to that does so much for children. I personally would have preferred to have just passed AMBER alert, but I am overjoyed we have this child legislation.

By the way, the judges did not have to report to the Congress, they only have to report to the Sentencing Commission, which is made up in part of judges. I wanted to correct that in the RECORD because I know my colleague will appreciate knowing that.

One of the most startling statistics is to find almost 4 million kids out of the 23 million children in our country between 12 and 18 have been abused. It is unbelievable. A study conducted by the Bureau of Prisons found that 76 percent of defendants convicted of child pornography or of traveling in interstate commerce to engage in sex with minors, admitted to undetected sex crimes, with an average of 30.5 victims; on average, 76 percent of people convicted of child pornography or of traveling in interstate commerce to engage in sex with minors, admitted to undetected—in other words, crimes that nobody knows about—sex crimes with minors with an average of 30.5 additional child sex victims. Every one of them.

It is time we get tough. This bill is a tough bill, as it should be. This bill will help solve some of the problems of society, as it should.

I have to confess, I have been underwhelmed by some of the arguments, underwhelmed by some of the arguments in this area. All I can say is that we do not do away with downward departures; they better be the departures allowed by the Sentencing Commission and not just conjured out of thin air by the judges.

I have to also confess the distinguished Senator from Massachusetts is continuously bringing up Justice Rehnquist and Justice Kennedy. Their letters were to the Feeney amendment which has been drastically modified by the Hatch-Sensenbrenner-Graham amendment. That argument, in and of itself, does not stand or hold water. I will not say that it is a misrepresentation, as has been indicated on the other side, but I will say it does not hold any water.

Now, there have been some complaints from some that the conference committee refused to pass a standalone AMBER alert and PROTECT Act bill. They complain that the conference bill contains measures that they had not considered and are opposed to including in the conference bill. We have a wonderful system of government in this country. Our system divides the Congress into two coequal branches of Government because that is the case. It is not unusual the legislation covering the same topics pass both Houses with language and subject matter that is not entirely the same. Just because the two legislative bodies do not agree on each and every provision, we do not simply walk away from the legislation. Instead, we convene a conference between the two legislative bodies in an attempt to harmonize the legislation.

Sometimes the conference between the two bodies reaches agreement, and sometimes the two bodies do not. In this case, we did. Both bills—the House bill and the Senate bill—dealt with crimes that victimized children. However, the two bills were not identical in every respect. The House bill included significant provisions that add stiff punishments to those who actually victimize children, as well as other punishment-related issues.

The House passed a measure that would have provided for a study on volunteer background checks, but we from the Senate side insisted that the bill go further, to include a pilot program so the volunteers would have access immediately. A majority of the conferees, after considering all of the measures, have agreed to this conference bill.

While all may not agree to each and every specific compromise made by the conference, this bicameral system has succeeded in compiling and producing comprehensive child protective legislation. In fact, it would be safe to say that some of the 400 Members of the House who voted for this today, who voted for this conference bill, agreed to each and every provision in the conference bill, but as with every piece of legislation, overall they voted to pass it.

That is how our system works. I urge my colleagues to vote in favor of this measure because this measure is a measure that can help to put an end to some of these crimes against children that are so affecting our society.

I want to pay tribute to John Walsh, to the people who run the Boys and Girls Clubs of America, and my friend, Wintley Phipps, who runs the Dream Academy to help children of prisoners who have family members in prison; to bring mentors and tutors into their lives to help them come into the digital world and brings mentors and teachers to help them understand computers, to help them understand there is a better way. Many of these kids, 65 to 85 percent of them, depending on the jurisdiction, would go to crime themselves.

I want to compliment those groups I mentioned and many others I wish I had time to mention, who are fighting these battles on the front lines against these child molesters, pornographers, rapists, et cetera. They deserve our respect and they deserve this legislation.

We all deserve this legislation. As a father of 6 children, and a grandfather of 21, I have to tell you I want all my kids and grandchildren protected. My kids are now adults so hopefully they can protect themselves, but my grandchildren by and large are not. I am worried about children all over this country. When you think the average convicted child molester has personally abused 30.5 kids, it is time to get tough on them. Frankly, it is time to quit playing games with the sentencing guidelines in this area.

I don't see why judges should be offended or concerned if we have them review decisions on guidelines, downward departures by the lower court, especially when those departures are unjustified, unwarranted, and in many cases ridiculous.

Let me address something else that has me deeply troubled about what I have heard on the floor about the main complaint by our friends on the other side—some of our friends on the other side; very few, I believe. I believe the vast majority of Democrats are for this bill. I hope they will vote for it. I will be shocked if they do not.

But the main complaint by Democrats appears to be they do not like this compromise that provides for meaningful review of the sentencing guideline provisions. Why anyone would oppose provisions that simply grant appellate courts the opportunity to give meaningful review to criminal sentences is just simply beyond me. The House had Sentencing Commission

hearings. The Senate has had Sentencing Commission hearings—regardless of the representations by my distinguished friend from Massachusetts. We had extensive hearings back in the year 2000. We all know a lot about this.

This measure, through compromise, has taken steps to address a growing problem both bodies identified in guideline sentencing.

But I am even more troubled by remarks I have heard or read from the Associated Press, where Republicans were accused of:

> . . . kidnapping the AMBER alert bill in an attempt to achieve partisan and wholly unrelated goals, getting judicial sentencing guidelines.

Understand, those who support this bill want to strengthen punishments. That is what the supporters have voted for; that is what the supporters who plan to vote for this bill want.

However, the insinuation that supporters of this bill have kidnapped anything is offensive. I am appalled that was said in public and in the press.

The AMBER alert provision is named after Amber Hagerman, from Arlington, TX. This child was kidnapped and murdered. This tragic crime has led to AMBER alerts in various States and is one of the provisions included in this bill for nationwide implementation. To invoke her name in connection with kidnapping is simply offensive. I suspect that when her family reads about that, instead of feeling proud about a law that is named in Amber's memory, this kidnapping reference in connection with her name will only prove more hurtful.

Let's put these unwarranted snipes—and that is what they are—aside. Let's vote on this bill and send it to the President immediately. It will be signed by Easter and those criminals who even think of stepping outside the law with respect to any of these offences will know the full weight of the law will be brought down to bear on them.

Mr. President, I again urge my colleagues to pass this bipartisan compromise agreement. The House of Representatives passed this legislation this morning by a vote of 400–25. I am pleased we will act tonight by voting on this critical measure to protect our children.

This bill enjoys widespread support, and the need for the measures contained in the bill is well demonstrated. Law enforcement organizations around the country have expressed their support for this bill. Victims' families and citizens alike have done so. Earlier I read a letter we received from Elizabeth Smart's family in support of the bill. Even citizens from Senator KENNEDY's home State of Massachusetts—such as Maggie Bish whose daughter Molly, was abducted in 2000 and hasn't been found—have expressed their support for this legislation.

I now urge my colleagues to vote in support of this bill and forward it to the President for his signature as soon as possible.

I know that some on the other side do not agree with each and every measure contained within it. I suspect that there are those among the 400 Members in the House who voted for this conference bill did not agree with each and every provision. They might not have agreed with the specifics of Representative FEENEY's amendment. However, overall, they believed that the conference bill includes child protection measures that will ultimately benefit those in our society who are most vulnerable.

The fact is, this legislation has many provisions that will help prevent crimes against children, as well as help keep those who prey upon the innocent out of our society and away from our children. I am not going to list all of them again here. But I note that provisions such as the AMBER Alert and Code Adam systems will allow the public to assist law enforcement in the timely search for and safe return of child victims. Stronger penalties for pedophiles and child molesters, and especially recidivists, will ensure that those who victimize children will stay behind bars where they deserve to be. Enhanced investigative tools will enable law enforcement officers to prosecute those who exploit children. The sentencing reforms will prevent sentencing abuses in cases involving child and sexual crimes where too often we have seen lenient sentences imposed. They will also ensure that appellate courts can adequately review sentences by district courts.

Mr. President, I would also like to take this opportunity to recognize the tireless work of the dedicated staff members on both sides of the aisle whose work around the clock made this legislation possible. First, on my staff, I want to specifically commend my former staffer Wan Kim, who recently re-joined the United States Attorney's Office for the District of Columbia as an Assistant United States Attorney. He, along with Mike Volkov, Reed O'Conner, Jennifer Wagner, Ted Lehman, Dabney Friedrich, and my Chief Counsel and Staff Director Makan Delrahim, all poured their hearts into this legislation. On Senator LEAHY's staff, I want to thank Julie Katzman, Steve Dettelbach, Tara Magner, Jessica Berry, and Ed Pagano. On Senator BIDEN's staff, Neil McBride, Tonya Robinson and Eric Rosen. On Senator SESSION's staff, William Smith and Andrea Sanders. On Senator GRASSLEY's staff, Chad Groover. On Senator GRAHAM's staff, James Galyean. On Chairman SENSENBRENNER's staff, I want to commend Will Moschella, Phil Kiko, Jay Apperson, Beth Sokul, Katy Crooks and Sean McLaughlin for their hard work and dedication.

It is time for us to vote.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. 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. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. HATCH. Mr. President, I ask unanimous consent that the vote with respect to this conference report occur at 6:40 today, and that immediately following that vote, the Senate proceed to executive session and a vote on calendar No. 60, the nomination of Ross Swimmer, to be Special Trustee for American Indians; further, I ask consent that following that vote, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, we have no objection on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. 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. REID. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the conference report to accompany S. 151.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—98

Akaka	Cantwell	Dole
Alexander	Carper	Domenici
Allard	Chafee	Dorgan
Allen	Chambliss	Durbin
Baucus	Clinton	Edwards
Bayh	Cochran	Ensign
Bennett	Coleman	Enzi
Biden	Collins	Feingold
Bingaman	Conrad	Feinstein
Bond	Cornyn	Fitzgerald
Boxer	Corzine	Frist
Breaux	Craig	Graham (FL)
Brownback	Crapo	Graham (SC)
Bunning	Daschle	Grassley
Burns	Dayton	Gregg
Byrd	DeWine	Hagel
Campbell	Dodd	Harkin

Hatch	Lugar	Sarbanes
Hollings	McCain	Schumer
Hutchison	McConnell	Sessions
Inhofe	Mikulski	Shelby
Inouye	Miller	Smith
Jeffords	Murkowski	Snowe
Johnson	Murray	Specter
Kennedy	Nelson (FL)	Stabenow
Kohl	Nelson (NE)	Stevens
Kyl	Nickles	Sununu
Landrieu	Pryor	Talent
Lautenberg	Reed	Thomas
Leahy	Reid	Voinovich
Levin	Roberts	Warner
Lincoln	Rockefeller	Wyden
Lott	Santorum	

NOT VOTING—2

Kerry	Lieberman

The conference report was agreed to.

(Disturbance in the galleries.)

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

NOMINATION OF ROSS OWEN SWIMMER TO BE SPECIAL TRUSTEE, OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to executive session to consider Calendar No. 60, which the clerk will report.

The legislative clerk read the nomination of Ross Owen Swimmer, of Oklahoma, to be Special Trustee, Office of Special Trustee for American Indians, Department of the Interior.

Mr. DASCHLE. Mr. President, the Senate is about to vote on the nomination of Ross Swimmer for Special Trustee for American Indians.

Trust reform is a critical issue for the Native American community nationwide, and the Special Trustee is the official responsible for directing the Department of the Interior's efforts to correct this longstanding problem and provide sound fiduciary services to trust beneficiaries. This nomination and vote will affect the prospects for success of this critical reform effort.

I think it is extremely important for the full Senate to reflect on two central facts about the trust debate as they consider Mr. Swimmer's nomination. First, for generations, residents of Indian Country have been victimized by persistent mismanagement of trust assets by the Federal Government. Far too many families for far too long have been denied trust assets to which they are entitled because of this mismanagement. And this situation has adversely affected their quality of life.

Second, frustration with the Federal Government's failure to come to grips with this problem has not only led to litigation (Cobell v. Norton), it has also solidified the tribes' determination to contribute to the development of a workable solution to the problem. Effective trust management reform will remain an elusive goal if the tribes are not full participants in this exercise.

The tribes understand that the Special Trustee for American Indians must be their ally in the search for a solution, not an independent actor balancing other agendas. In the past months, leaders of South Dakota's nine tribes have expressed to me their concerns about the administration's desire to entrust Ross Swimmer with this influential role.

The bottom line is that trust beneficiaries deserve a Special Trustee in whom they can have confidence to restore sound accounting principles and integrity to the Federal Government's management of trust assets. There is a critical need to elevate the Indian trust issue to higher levels within the administration. The current state of Indian trust management is a debacle and has come to be known as the ''Enron of Indian Country.'' We need an individual who is able to tackle this issue with the interested stakeholders. I agree with South Dakota tribal leaders and the Great Plains Tribal Chairmen's Association that Ross Swimmer is not the right man for this job.

Ross Swimmer has had many responsibilities at the Department of the Interior. But, most significantly for this debate, over the past several years, he has been an integral part of the Department's disappointing effort to impose a trust management solution conceived by Federal bureaucrats without the full engagement and consent of Native American leadership. It is time to make sure that trust beneficiaries receive the assets to which they are entitled. We must not allow the bureaucracy to ''run out the clock'' in the hope that the courts will ''save the day'' by absolving the Government of its trust responsibility.

To provide some perspective, the 16 tribes of the Great Plains in South Dakota, North Dakota and Nebraska own 10 million acres of land held in trust by the U.S. Government. These lands represent over one-third of the tribal trust assets. They have huge interests at stake in ensuring that the Special Trustee is committed to a fair resolution of the trust assets management controversy.

I value and respect the judgment of South Dakota tribal people, their tribal leadership and the Great Plains Tribal Chairmen's Association on this important issue. Therefore, I cannot support Mr. Swimmer's nomination as Special Trustee for American Indians.

Mr. NICKLES. Mr. President, today I want to speak on the nomination of my good friend Ross Swimmer to be Special Trustee for American Indians. Back in 1994 Congress passed the American Indian Trust Fund Management Reform Act, which created the position of Special Trustee for American Indians. This position was created to address years of trust fund mismanagement. Special Trustee is a very challenging responsibility not to mention a thankless job. The President could not have picked a better person for this job. Because of Ross's extensive background in Indian law, banking, and finance, I believe that Ross Swimmer can begin to resolve this issue.

I have had the pleasure of knowing, respecting, and working with Ross for more than 22 years. He has served Indian country in both the public and private sectors where he has served in numerous leadership capacities. For 10 years, Ross was Principal Chief of the Cherokee Nation, the second largest Indian tribe in the United States. He served 3 years as Assistant Secretary at the Department of Interior, where he managed a $1.5 billion budget; 15,000 employees, and the oversight and management of policy concerning Indian affairs.

Ross was president of the First National Bank in Tahlequah and chairman of the First State Bank in Hulbert, OK. He was president of a multimillion-dollar manufacturing company, owned by the Cherokee Nation, which is involved in the aerospace, defense, and telecommunications industries. Ross's legal experience includes General Counsel to the Cherokee Nation, associate and partner in the Oklahoma City firm of Hanson, Fisher, Tumilty, Peterson and Tompkins. Because of Ross's background with Indian law, he established the Indian law division for the law firm of Hall, Estill, Hardwick, Gable, Golden and Nelson.

Ross had the distinction of serving as cochairman of the Presidential Commission on Reservation Economies; chairman of the Energy Resources Tribes; and chairman of the White House Conference on Indian Education. He was also named Outstanding American Indian Leader in 1985 and was inducted into the Tulsa Historical Society's Hall of Fame.

I am delighted to be here to recommend my friend Ross Swimmer, to be Special Trustee for American Indians. I have confidence in Ross that he will work with the Indian community toward resolving the issues surrounding the Indian trust. As you can see by Ross's career, he has the dedication, experience, and qualifications as well as the understanding of Indian law necessary to address this complex, monumental task.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Ross Owen Swimmer, of Oklahoma, to be Special Trustee, Office of Special Trustee for American Indians?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Wyoming (Mr. THOMAS) is necessarily absent.

Mr. REID. I announce that the Senator from North Dakota (Mr. DORGAN),

the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. DORGAN) would vote ''no''.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 24, as follows:

[Rollcall Vote No. 133 Ex.]

YEAS—72

Alexander	Domenici	Lincoln
Allard	Durbin	Lott
Allen	Edwards	Lugar
Bayh	Ensign	McCain
Bennett	Enzi	McConnell
Biden	Feingold	Miller
Bond	Fitzgerald	Murkowski
Breaux	Frist	Nickles
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Roberts
Burns	Grassley	Rockefeller
Byrd	Gregg	Santorum
Campbell	Hagel	Schumer
Carper	Hatch	Sessions
Chafee	Hollings	Shelby
Chambliss	Hutchison	Smith
Cochran	Inhofe	Snowe
Coleman	Inouye	Specter
Collins	Jeffords	Stevens
Cornyn	Kennedy	Sununu
Craig	Kohl	Talent
Crapo	Kyl	Voinovich
DeWine	Landrieu	Warner
Dole	Leahy	Wyden

NAYS—24

Akaka	Daschle	Mikulski
Baucus	Dayton	Murray
Bingaman	Dodd	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Cantwell	Harkin	Pryor
Clinton	Johnson	Reid
Conrad	Lautenberg	Sarbanes
Corzine	Levin	Stabenow

NOT VOTING—4

Dorgan	Lieberman
Kerry	Thomas

The nomination was confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The PRESIDING OFFICER. The Senator from Kentucky.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators allowed to speak during that period for up to 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana.

POST-WAR IRAQ

Ms. LANDRIEU. Mr. President, I would like to take just a few minutes to speak about the unfolding victory in Iraq and to speak about a specific point that I am going to be spending some time working on throughout the course of the next couple of days and as we spend some time, in a recess, traveling back to our States and visiting other places in the world that have been supportive in terms of our alliance in Iraq.

I want to say, just before we break tonight, that the people of Louisiana have watched, with relief and exuberance and pride, the exploits and the work of our troops in Iraq. We have been proud of each and every soldier and the work they are performing under very difficult circumstances, but they are performing beautifully, exceptionally, as expected. We are very proud of their work, the Active Forces as well as the Reserve Forces.

We know we have done many things right in Iraq. We know there are some weaknesses we will address. The military is always the first to say—which is why I enjoy working so closely with them—this is what we did right and we are proud of it and we are going to do it better. But we don't mind admitting there are some things we could do better next time. And lessons learned is something that our military goes through after each and every exercise, which is why they are so good, and why we get better and better and better. I am very proud of that kind of approach.

So as we watch this victory unfold in Iraq, with every toppling of every statue, with the destruction of every image of Saddam Hussein, we can begin to build a new image, a new vision for the people of Iraq, one they so richly deserve and have waited decades and decades to arrive. And it is our pride and our great joy that America and Britain and our allies are helping to bring about this vision, as we speak tonight on the floor of the Senate.

We have been involved today in many other important issues, but, of course, there is no issue more important to this Senate or to this Congress or to this country right now, or to the world, than what is unfolding in Iraq as we speak.

I want to just make a note about one specific aspect of the postbattle plan for Iraq. I am going to be working closely with many committees in the Senate to help to fashion that plan, which, of course, will be broad and comprehensive. Hopefully, we will have bipartisan support.

The President will submit many of his own ideas. The international community will contribute. I, for one, have felt very strongly that our military should continue to lead that effort. While they are soldiers first, and soldiers always, they have tremendous skills and abilities when it comes to postconflict periods, when the battle is actually over and the bullets stop flying and the construction and reconstruction begins. Not that our military would want to be engaged over a long period of time, but there are, most certainly, skills that our military can bring to establishing the, at least, early stages of that civil affairs network and framework.

So I am pleased to see the House and the Senate moving back to the administration's original position, which was to allow our military to lead that effort and the Pentagon, as opposed to the State Department; most certainly for the U.S. to continue that leadership position as opposed to the U.N. The U.N. should be a partner, the international community should be a partner, but the U.S. should lead that effort.

I think that is the way we are moving, and I most certainly support that. And I could venture to say, without seeing any polls, I know the people of Louisiana would want that kind of arrangement to be made.

In one part of the post battle plan for Iraq, the reconstruction plan, I am hoping that we would strongly consider—and I will be filing a resolution in just a few days, as soon as we can get some of the details worked out, and, hopefully, file it in a bipartisan way—a resolution that would suggest that we help the people of Iraq establish a permanent trust fund for their long-term economic development, a trust fund based on the revenues received from the production of oil and gas.

The reason I want to spend just a few minutes speaking about this idea is there have been several articles written. We have done, in our office, some research on this subject. And I have had a great deal of experience with the people of Louisiana with this concept. And we are not the only State that has created trust funds from the oil and gas reserves.

Just like Iraq, although we are not a nation, Louisiana produces a tremendous amount of oil and gas and has some of the richest reserves in the United States.

Texas is also a State that has tremendous resources and established, years ago, a permanent trust fund. The proceeds of that fund are directed to the support and maintenance and the strengthening of their two major universities in Texas. And the billions of dollars that have flowed into this trust fund have provided educational opportunities and research opportunities that have led to jobs creation and economic strength in the State of Texas.

The State of Alaska probably has the largest of such a trust fund, called the Permanent Alaska Trust Fund. Not only have those resources been used to help Alaska strengthen its economy, but there are also, literally, rebates that go from that fund to each individual citizen of Alaska. There are only 500,000 people, but the fund has worked in many wonderful ways.

I will suggest through this resolution that we in the Congress lay out an idea to create such a trust fund for the people of Iraq, run by the people of Iraq, to make sure of that diminishing resource, although they supply now 6 percent of the world's oil, and while I am convinced that our technology working with them will find more oil, and potentially gas reserves, that is a diminishing resource, just as in Louisiana

and Texas and Alaska. And beginning a plan now for that money to be used in appropriate ways for education, for health care, for economic development, for improving the infrastructure in Iraq and setting up in a way that protects those moneys so they can be used for the people of Iraq would serve as a great foundation or at least a significant part of a plan for reconstruction for Iraq.

In conclusion, the people are talented and industrious, the infrastructure is there to be built on. With a few good and solid ideas like carving out a trust fund with specific funding from their oil and gas reserves, the people of Iraq can enjoy those reserves and benefit from them, not just in the next year but in many years to come.

I yield the floor.

THE BUDGET CONFERENCE AND OUR ECONOMY

Mr. DORGAN. Mr. President, I wanted to make a comment about what I have been reading this afternoon and hearing most of today about a process by which the budget conference is going to cobble together a compromise and bring it to the House and the Senate, with the prospect of having the Senate have its arms tied behind its back procedurally in order to accomplish a very large tax cut.

Now, what I do not understand is this: We have an economy that everyone understands is in some significant trouble. We have a fiscal policy that does not add up.

About 2 years ago, the President said he wanted a fiscal policy with a very large tax cut, $1.7 trillion. Some of us said: Well, what we ought to do is be a little careful and be a little bit conservative because we don't know what is going to happen in the future.

The President said: No. What we have are budget surpluses as far as the eye can see, and we ought to give that money back.

I said: I believe we ought to provide some tax cuts, but maybe we ought to be a little bit conservative. Who knows what is going to happen in the future.

Well, the President won the day on that, and we had the tax cuts. And then we ran into a couple of problems: One, a recession; two, the terrorist attack of 9/11, which was devastating both with respect to loss of life and also this country's economy.

Then we had the largest corporate scandals in this country's history. We had a pancaking or a flattening of the stock market, a collapsing of the technology bubble in the stock market.

All of these things came to the same intersection at the same time and have caused enormous problems for this country's economy.

Some people say none of that matters. The medicine is still the same no matter the circumstance. I submit, when your economy is sluggish, and people are concerned about the future, they don't have the kind of confidence you would expect about the future—confidence is, after all, what allows this economy to grow—that you ought to take a look at the fiscal policy and see if you can construct a policy that adds up.

Let me describe where we are today.

Two years ago, we had projections that we would have budget surpluses for the next decade—every year, big budget surpluses.

Well, 2 years later, guess where we are. This year, we have a projected $460 billion budget deficit. Under this fiscal policy, this Government spends almost $1.5 billion a day more than it takes in—every single day, 7 days a week. People say it does not matter.

We send our sons and daughters off to war. And those brave souls have performed in a way that make all of us proud. But are we saying to them: ''Go fight this war and come back and we'll allow you to bear the burden of the costs. We will allow you to bear the burden of paying off the debt''. That is what this fiscal policy does.

Some will say the budget deficit is only $300 billion. That is not true. One hundred sixty billion is the Social Security trust fund. That belongs in the trust fund. You can't use that to counter the deficit. Our budget deficit right now is $460 billion.

What is the solution? The majority party says the solution is to cobble together a budget that looks like Disneyland to me in its construct, that says what we ought to do is have larger and larger tax cuts. Why? Because it is a growth policy.

The only thing that is growing in this economy is the Federal debt. The budget that left the Senate—I will bet not many Senators know this—which had the lower tax cut number in it, $350 billion over the next 10 years, proposed on page 6 that at the end of 10 years we would have a $12.9 trillion debt. I wonder if people know that.

Will it grow the economy? No, it is not going to grow the economy. This fiscal policy is going to grow the Federal debt, from just over $6 trillion to nearly $12 trillion in 10 years.

I come from a small town, but we know how to add and subtract. That isn't progress, not for this country.

What is the construction of all of this? The construction is to say, it is a troubled world, we need more defense spending, a lot more. Most Members have decided, yes, we should do that; it is a troubled world; we are threatened by terrorists; we need more spending to protect the homeland—homeland defense it is called, and most Members say yes; I say yes to both of those. So higher homeland security and defense spending, and then very large tax cuts, and then saying: Let's shrink the domestic discretionary spending; let's decide to shrink that.

I was at one hearing today—one example of dozens—on shrinking spending: Let's cut spending for young American Indians going to tribal colleges to try to better themselves through education. That is what they propose. We will shrink spending for that. Does that make any sense?

I told a story this morning about a young woman named Loretta—someone I have been privileged to know. She grew up in a pretty troubled circumstance. She was shy, stuttered, had a baby out of wedlock, got into lots of trouble. She found her way back. This young woman went to a tribal college on an Indian reservation, got an education, had the support of an extended family for childcare and the kinds of things you can get support for when you are going to a tribal college on the Indian reservation. That young woman who started out in such a difficult situation is now called Doctor. She went to school. They called her a savage. She had a very troubled beginning. But now she is a Ph.D.

Do tribal colleges work? Does it matter? Does it make sense? Is it an investment in life that makes sense? The answer is yes.

So if the construct of the fiscal policy says, let's add for defense and homeland security, and we all agree to that, and let's have very big tax cuts, and then let's cut programs such as tribal colleges that give some of those young American Indians an opportunity, if that is the construct, I say this country is not investing smartly. I would much sooner provide an opportunity for those young kids to go to college than provide a tax cut, on average, which will be $80,000 a year for the American who earns $1 million a year in income. At a time when we have a $460 billion annual budget deficit—yes, it is that unless you take the Social Security trust fund and use it as it has been misused—we say we will just take this out of the hide of some programs that really help people. I don't think that makes any sense. By the way, we will have to do that in order to pay for very large tax cuts. That doesn't make sense either.

I don't know what happened to conservatism. I thought being conservative meant that you did not want to see this runup in Federal budget deficits, you did not want to end up in 2013 with a $1.9 trillion Federal debt. Yet that is where we are headed. That is on page 6 of the budget report that enough of my colleagues voted for to send it on to the House. Coming back, it will be worse. Coming back, I guarantee you that on whatever page they list public indebtedness, it will be higher than $11.9 trillion, if they come out with the House number rather than the Senate number on tax cuts.

I don't understand the rationale. We have Nobel laureates, some of the top business men and women, we have almost anybody who looks at this fiscal policy through a lens other than the rose-colored lens of politics saying: This is crazy. This doesn't make any sense. It doesn't add up. This fiscal policy is going to steer this country in a way that will prevent us from having economic growth.

It is interesting to me that this fiscal policy is always described as the growth plan. Even the nonpartisan Congressional Budget Office says this is not going to grow the economy. The only thing it is going to grow is the Federal debt, doubling it from $6 trillion to $12 trillion. I don't understand. And perhaps some will say: You don't understand; this is a new approach. But it is really not even new. Twenty years ago we did this. Then the fiscal policy was to say, let's double defense spending and cut taxes, and somehow it would produce more revenue and add up.

The fact is, we ended up on the road to $6 trillion in additional indebtedness. Then, through a series of good fortunes, this country saw its economy begin to pick up steam once again, and we saw a whole series of things happen, with massive creation of new jobs and growth. Then we began finally to create budget surpluses.

At that moment, very quickly eyes began to water; everybody began to salivate over the surpluses: What can we do with the budget surpluses? The President said: It is their money; it belongs to the American people—he is right about that—so the surplus should go back to the American people.

But some said: Let's not lock in place a tax cut so large for 10 years that it would put our economy at risk.

Never mind, he said.

So now the question: What belongs to the people? The debt? At $1.5 billion a day, every single day, $1.5 billion more that we spend every day than we take in.

It is unfathomable that we have seen this juxtaposition in American politics that those who say they are conservatives don't worry about the debt. But, of course, the evidence is quite to the contrary.

I am perhaps limited by having taught economics for a couple of years. I always point out that although I taught economics, I have been able to overcome that experience. The fact is, the study of economics is not a science; it is an art. But we know enough about how this economy works to understand it works with respect to people's confidence. If the American people are confident about the future with respect to this economy, they do the things that manifest that confidence, and that is the expansion side of the business cycle. They buy a home, take a trip, buy a car, make a purchase, and you have the expansion side of the American business cycle. If, however, they are not confident about the future, they do exactly the opposite: They decide not to make the purchase; they postpone the trip; they don't buy the car; they don't buy the house. And that is the contraction side of the business cycle.

It is all about confidence. The question raised by Nobel laureates and many others, and op-ed pieces, in fact, in the last day or so by a bipartisan group of the most distinguished American thinkers, in my judgment, is: How can the American people be confident about the future of this economy until and unless they see a Congress willing to make the tough choices to put this economy back on track and make these budgets add up. The easiest political lifting in America, the easiest lifting for American politicians, is to say: Let me support tax cuts. A more difficult proposition for a politician is to say: Let us make tough choices to make sure our budgets add up.

There is no way that what we are going to be confronted with tomorrow morning adds up. The American people know it, politicians know it, economists know it, and it is going to erode confidence in this country that will, in my judgment, stall and stutter the recovery that we expect, need, and deserve.

I will have more to say tomorrow on this subject. It is a disappointing day to know what has happened that will bring the budget to the floor tomorrow in such a state that we will hardly give the American people confidence about our country's future.

I yield the floor.

JUDGE MARY BEATTY MUSE

Mr. FRIST. Mr. President, on April 29, 2003, Judge Mary Beatty Muse of Boston will receive the Lifetime Achievement Award from Boston College Law School which she attended 50 years ago. Judge Muse's professional and personal achievements are extraordinary, and Boston College Law School does well to honor this admirable woman whose life stands as a reminder of honor, courage, commitment, duty to profession, and love of family. It has been my good fortune to know Mary Muse over the past several years, as three of her grandsons and my own boys have become close friends and our families have shared many times together. Let me provide a brief summary of Judge Muse's considerable achievements and note several of the commendations she has received because of her professional and personal integrity.

Mary Beatty Muse was born on July 12, 1920, in Boston, the daughter of Irish immigrants. In 1937, she graduated from the Boston Latin School for Girls and then attended Emmanuel College, graduating in 1941.

Soon after Pearl Harbor, she enlisted in the Navy and joined the first class of the newly formed WAVES. She served in the Navy for 3 years as an intelligence and communications officer. Lieutenant Muse was cited for numerous achievements during World War II, as she and this newly formed group of woman sailors served valiantly during that conflict.

Following the war, she attended Boston College Law School on the GI bill, graduating as one of three women in a class of approximately 160 students. That law school, like so many other of our institutions, has seen much progress over the past several decades. In noting this progress, it is imperative we recall and honor the people who were in the vanguard of this movement of women into our professions. The circumstances back in 1950 were dramatically different for women. It took unusual courage, perseverance, and fortitude to achieve as Mary Muse did.

From the early days in her professional career, Judge Muse served as a role model to a generation of younger women, particularly in the Boston area. In her law practice and on the bench, she inspired countless women by her words and actions. Over time, the disparity that was so palpable and obvious when she started her career in law has been erased. Only now because of women like Judge Muse can it be said that our educational institutions are open to all, regardless of gender. This past year, Boston College Law School had a graduating class of 267 students, 123, or 46 percent, of whom were women, a vastly different setting from the early fifties when Mary Muse and her two female classmates accounted for less than 2 percent of their class.

In 1983, Mary B. Muse was appointed a justice of the Massachusetts Trial Court. On the bench, she was known for her firm but kindly manner, as she treated all participants—attorneys, court personnel, and parties—with the respect and courtesy that should be the hallmarks of our justice system. She remained on the bench until her mandated retirement at the age of 70. To say that she ''retired'' though is to misspeak. Judge Muse is now almost 84 and has not begun to slow down in her daily chores or professional activities. Since she left the court, she has been active in numerous and varied undertakings. With an unswerving sense of commitment and an untiring energy, she has served as a member of the Supreme Judicial Court Rules Committee; a member of the board of governors for the Massachusetts Academy of Trial Lawyers; an officer of the Massachusetts Association of Woman Lawyers; vice president of the Massachusetts Judges Conference; a member of the board of directors of the Massachusetts Catholic Lawyers Guild; an elected official in Brookline, MA; a member of the board of trustees of Emmanuel College; and as an officer and member of various other groups and organizations that serve the community . She has also been appointed by the Governor of Massachusetts to be a Master for the Review of Treatment Plans for the Mentally Ill and has been a member of the Governor's Advisory Board to the Department of Mental Retardation.

Her involvement in the Catholic Church reflects the same level of commitment that she brings to her professional endeavors. She has been a Eucharistic lay minister and an active member of her church. But more importantly, behind the scenes, she has been a source of constant and unremitting charity to scores of those

in need. She understands and lives by the notion of quiet charity, helping others both by spiritual and material assistance.

Judge Muse has been honored numerous times by colleges, bar associations, and other organizations. She is the recipient of an honorary degree from Emmanuel College. She has received the Irish American Charitable Award and has been acknowledged with the Distinguished Jurist Award from the Massachusetts Association of Woman Lawyers. In 1991, she was the recipient of Emmanuel College's Alumna of the Year Award. In 1998, Boston College gave her its Alumni Award for Excellence.

I provide this background to give a small sample of the full and vital life of this still very active woman. But it has one critical omission. Along the way, Judge Muse also raised her 11 children, 8 sons and 3 daughters. Each of them was not only a college graduate, but also has a graduate degree from a professional school. They are lawyers, doctors, teachers, builders—and one son is a judge like his mom. If you asked Judge Muse her greatest achievement in life, it would be a quick answer: her family. Throughout her career, she has placed a primacy on what she deems most important in life: her loved ones. As she pursued and reached the pinnacle of her professional career, she raised a family that was deeply nurtured in great love and values. Judge Muse stands heroically in the eyes of her 11 children, all of whom will come from different spots in the country and abroad to be with her on April 29 when she receives this special acknowledgment of her remarkable life.

Finally, my statement would not be complete if I didn't make some mention of the other great force in her life. Her husband, Bob Muse, himself a great trial lawyer and a much decorated Marine Corps fighter pilot, has been her partner for 60 years. No one will stand prouder on April 29. He has been her source of strength and love—as she has been for him.

Judge Muse has served as an exemplar for others, men and women alike, who seek to achieve in this world while holding on to the values of family, friends, and community. She is a gentle and unassuming person whose modesty and Irish wit forbid her from reflecting on, or talking about, the great influence she has had on so many. But it is appropriate and right that others do so—and Boston College Law School does well to honor one of its most distinguished graduates.

NORTH KOREA

Mrs. FEINSTEIN. Mr. President, today North Korea formally withdrew from the Nuclear Non-Proliferation Treaty. Yet while the United States has marshaled its military, diplomatic, and political resources against Iraq over the past 6 months, too little appears to have been done with regard to North Korea, which I believe represents the most imminent, serious, and dangerous threat facing the United States.

Over the past few months North Korea has: expelled International Atomic Energy Agency inspectors; moved 8,000 previously canned plutonium rods back to a reprocessing facility; started up its Yongbyon nuclear facility again; scrambled fighter jets to intercept a U.S. Air Force reconnaissance plane over the Sea of Japan; and, threatened to abandon the armistice that has been in effect since 1953.

We must face facts: North Korea, an isolated dictatorship, with a collapsed economy, controlled by its military, and in possession of nuclear weapons and the means to deliver them, represents a clear and present danger.

If the United States does not exercise leadership and seek a pragmatic approach to engaging North Korea—pragmatism that comes not from weakness, but from strength—we run the risk of disrupting strategic stability in the Asia-Pacific region, the most vital political, military, and economic region for the United States in the 21st century, and undermining our international credibility and global nuclear nonproliferation efforts.

North Korea is a quasi-Stalinist state which, since its formal creation in 1948, has been run by two men—Kim Il Sung, who died in 1994, and his son, Kim Jong Il. It is still almost entirely closed to the Western World, a stark and isolated country marked by repression and poverty.

The North Korean people have no access to outside sources of information, such as television or radio or the Internet.

The totalitarian discipline of the North Korean people is dramatically illustrated by the fact that North Korean infiltrators commonly commit suicide rather than allow themselves to be captured. Only in rare cases have they been captured before they killed themselves. That is a measure of fanatical devotion.

Second, the North Korean economy is increasingly isolated and stands, in my view, on the brink of collapse.

In many ways, North Korea is the ''black hole'' of Northeast Asia. Even before Russia and China curtailed their energy and food support in the 1990s, the North Korean economy was in free-fall.

One measure of the dire straits facing the North Korean economy is the famine that has gripped that nation for the past decade. Largely created by gross human negligence, not natural causes, it has killed an estimated 2 million people since the mid-1990s. Although harvests have improved modestly in recent years, food shortages are still a serious problem.

In recognition of this problem, just last month Secretary of State Powell announced that the United States would provide 40,000 tons of food aid to the North—a modest level compared to recent years but significant nonetheless.

A second measure of the desperate situation facing the North Korean economy is the collapse of its energy sector.

North Korea's total electricity consumption in 2000 was only 65 percent of what it had been in 1991. North Korea has resorted to a rationing system for electricity and often experiences extended blackouts and power losses due to an antiquated transmission grid, and the North Korean agricultural sector is severely afflicted by a lack of diesel and power supplies, as well as spare parts and fertilizer.

Taken together, North Korea's continuing isolation, famine, and economic collapse constitute a humanitarian crisis, and act as a barrier to improving cooperation and engagement in Northeast Asia on a number of fronts—political, economic, and military.

In early October of 2002, Assistant Secretary of State James Kelly informed North Korean officials that the United States was aware that North Korea had a program underway to enrich uranium for use in nuclear weapons.

According to Secretary Kelly, with whom I have discussed this situation on several occasions, North Korea initially denied the allegations, but later confirmed the U.S. claim. In confirming that they had an active nuclear weapons program, they also declared that the 1994 Agreed Framework was essentially null and void.

Under the Agreed Framework, signed by North Korea and the United States: North Korea would freeze its existing nuclear program and agree to enhanced International Atomic Energy Agency, IAEA, safeguards; the United States would lead an effort to replace the DPRK's graphite-moderated reactors for related facilities with light-water, LWR, powerplants; the U.S. pledged to provide 500,000 tons of heavy fuel oil, HFO, annually until the LWRs were completed; both countries would move toward full normalization of political and economic relations; both sides would work together for peace and security on a nuclear-free Korean peninsula; and both sides would work to strengthen the international nuclear nonproliferation regime.

Implementation of the Agreed Framework was never perfect. None of those who negotiated it or worked to implement it were operating under the mistaken belief that North Korea was a ''good actor.'' But the guts of the deal—international safeguards on North Korea's plutonium facilities in exchange for HFO and the construction of the LWRs—appeared to be intact until October 2002, when North Korean officials acknowledged the existence of a clandestine program to enrich uranium for nuclear weapons that is in violation of the Agreed Framework and other agreements.

With the Agreed Framework now null and void, North Korea may well

find in the production of fissile material a new cash crop, ready for export, to support its sagging economy.

What makes the North Korean nuclear program of particular concern is that North Korea also possesses advanced missile technology—in fact, it is the only country on earth that continues to sell Missile Technology Control Regime-banned missiles—including missiles that one day may be capable of reaching the United States.

North Korea produces a wide range of ballistic missiles, including extended range versions of the Soviet-era Scud missile as well as indigenous medium range No Dong and Taepo Dong missiles.

In fact, in 1998, North Korea test fired one of its Taepo Dong missiles over Japan and into the Pacific.

In addition, since at least 1987, North Korea has been developing long-range missiles, including the Taepo Dong 2. A two-stage Taepo Dong 2 has a range of approximately 6,000 miles, while a three-stage version has a 9,300 mile range, allowing it to hit almost any point in North America.

North Korea has also developed and produced cruise missiles. In fact, the land-to-ship missile fired last month on the eve of Roh Moo-hyun's inauguration as South Korea's new President, was a cruise missile believed to be based on the Chinese Silkworm missile design.

Exporting missiles is one of the few sources of hard currency for North Korea, and in addition to the recent Scud sale to Yemen, North Korean leader Kim Jong II has admitted that Pyongyang sells missile technology to other nations, including Syria, Iran, and Libya.

Now, I believe the blame for precipitating the current crisis lies squarely with North Korea, which clearly violated the Agreed Framework by undertaking its secret uranium enrichment program.

The government of Kim Jong II has clearly placed its focus not on feeding its people but in developing its military, its missiles, and its nuclear capability all in defiance of the treaties it has signed.

Yet it also appears that our own handling of events on the Korean peninsula over the past 2 years, as well as our broader foreign policy rhetoric and statements have served, ironically, to fuel North Korea's paranoia and made the situation much more difficult to manage.

Part of the problem was our reluctance to endorse former President Kim Dae Jung's ''Sunshine Policy,'' a diplomatic and economic effort by the South Korean Government to ease tensions with the North. President Kim was awarded the Nobel Peace Prize in 2000 for precisely these initiatives.

This move was perceived as a major humiliation in South Korea, helped set the stage for the rise of anti-Americanism, and was seen as a sign by the North that the administration was intent on a policy of isolation and confrontation.

Next month, when President Roh visits Washington, I would urge the administration to take great care to assure that the United States and South Korea share a common vision, goal, and purpose regarding North Korea.

The North Korean situation offers no easy solution. But over the past several months it has gone from bad to worse, and the administration has yet to demonstrate the degree of high-level seriousness and commitment necessary to defuse the crisis.

We cannot allow North Korea to produce additional nuclear material. Restarting its production facility will allow North Korea to develop at least a half dozen nuclear weapons within 6 months.

It is bad enough that North Korea might acquire a significant nuclear arsenal for its own possible use. But even worse would be North Korea becoming a plutonium factory selling fissile material to the highest bidder. As we were reminded in December when we intercepted a quasi-legal missile shipment to Yemen, this is a regime that will sell anything it develops.

In short, the administration's justification for being concerned about Iraq that it is a brutal dictatorship that may threaten instability in the region and may provide WMD to terrorists is quickly becoming a reality with North Korea.

A failure to stop North Korea's nuclear program is sending a terrible message to other rogue states and to our friends and allies as well. Every would-be proliferator is measuring our response to North Korea as they consider how to chart their futures.

And a nuclear North Korea may lead friends in the region, like Japan and South Korea, to conclude that they have to increase their military capabilities, sparking an arms race in Asia and drawing China, India, and Pakistan into a regionwide cycle of escalation.

At the end of the day, I believe that we face the same three basic options today that we did in 1994: We can launch a preemptive strike against North Korea's nuclear facilities; we can pursue a policy of isolation and containment; or, we can seek to persuade North Korea to abandon its nuclear ambitions through negotiations.

In reality, a preemptive strike is not a feasible option.

First, while we might be able to take out Yongbyon and other well-known sites, we simply don't know where all of North Koreans fissile material, missile, or nuclear facilities are located. There are over 10,000 caves and holes in North Korea. We don't know the location of the uranium facility.

Second, launching a preemptive strike is hardly a palatable option given the military realities on the ground at the DMZ. Such a strike would lead to all-out war on the Korean peninsula, and although I believe the U.S. and our allies would emerge victorious, the price would be high.

Finally, our South Korean allies strongly reject a preemptive strike, which should give us pause.

Likewise, there are major problems with continuing a policy of isolation and containment, as some in the administration have argued for. In essence, isolation and containment appear unlikely to succeed in toppling a regime that has been isolated and contained for so long. And it means that we have acquiesced to North Korea's going nuclear, and to North Korea acquiring serial production capacity for nuclear weapons and fissile material. Furthermore, isolation will not prevent North Korea from exporting fissile material to Iran, al-Qaida, or others.

A policy that allows North Korea to build and retain nuclear weapons and long-range missiles capable of reaching the United States, and to possess excess fissile material and a highly efficient network to sell or transfer fissile material to terrorists or other rouge states, is not in our best interest, which brings us to the third option negotiations.

I strongly believe that the United States must signal its willingness to engage in immediate U.S.-North Korean negotiations to dismantle North Korea's nuclear program in return for U.S. security assurances to North Korea, economic assistance and normalized relations. In fact, as some experts have suggested, bilateral negotiations themselves could be premised on a North Korean commitment not to reprocess the Yongbyon reactor fuel rods into plutonium during the discussions.

As we seek creative solutions to engage North Korea and go forward with a process of negotiations, it is critical that we do so in harmony with South Korea and Japan, and both China and Russia must also play a major role. The administration is right that this crisis is an international problem that requires the active involvement of the other powers in the region.

I am particularly pleased to note that China has, in fact, played a constructive role in helping to convey to North Korea the gravity of its current course.

At the same time, I believe that the burden of international leadership falls on the United States, and, as we seek to engage North Korea diplomatically, we must move beyond continuing to argue over the shape of the table or how many chairs should be at it. Continuing to do so is little more than an excuse for those who would prefer to see the crisis escalate instead of seeking to solve it.

Although the administration believes, correctly, that bad behavior should not be rewarded, it is also a truism of diplomacy that if you want to get something you must be prepared to give something.

And I strongly believe that it is in the United States' best interests to get something from North Korea: That North Korea cease and desist its nuclear activities and stop proliferating missiles.

So I believe that it is imperative to think creatively about inducements that can be offered to induce North Korea to relinquish its nuclear ambitions. Implementation of several relatively modest nonnuclear energy sector initiatives—introducing market institutions to the North Korean energy sector; undertaking efforts to repair the existing electric grid; rehabilitating coal supply and transport; eliminating waste; and underwriting small-scale renewable projects—would provide for a stable energy sector for North Korea in the near and intermediate term. And, as part of a process of larger diplomatic engagement with North Korea, this can contribute significantly to defusing the current crisis.

There is no evidence that North Korea has started to reprocess. North Korea may well be determined to go down the nuclear path and a nuclear North Korea may well be an unavoidable consequence of the current crisis. But nothing is yet set in stone, and at a time of increasing uncertainty the world looks to the United States to lead. And there is no better way to underscore our seriousness than through direct negotiations. Such talks are all the more important when dealing with an isolated, tyrannical and bellicose regime, because miscommunication can all too easily lead to miscalculation, with possibly catastrophic consequences.

REAUTHORIZING THE ASSAULT WEAPONS BAN

Mr. LEVIN. Mr. President, a Bureau of Justice Statistics survey published in November 2001 reported that almost 7 percent of State inmates and more than 9 percent of Federal inmates carried military-style semiautomatic weapons in carrying out the crime for which they were convicted. In 1997, roughly 43 percent of inmates who carried a military-style semiautomatic or fully automatic weapon fired it and more than 25 percent of them killed or injured their victim.

Military-style semiautomatic weapons are modifications of traditional semiautomatic weapons. They incorporate features intended to give users an advantage in combat situations. Such features include but are not limited to: pistol grips, folding stocks, bayonet mounts, and flash suppressors. The 1994 semiautomatic assault weapons ban prohibited the manufacture of semiautomatic weapons that incorporate at least two of these military features and accept a detachable magazine. Preexisting military-style semiautomatic weapons were not banned.

The semiautomatic assault weapons ban will expire on Sept. 13, 2004. If the law is not reauthorized, the production of military-style semiautomatic weapons can legally resume. As the Bureau of Justice Statistics study illustrates, the use of military-style semiautomatic weapons is already a widely used option for many in the criminal population. Restarting production of these weapons will obviously increase their number and availability. Such an increase does not bode well for public safety.

It is critical that we reauthorize the semiautomatic assault weapons ban. We should not wait for new statistics to demonstrate that more criminals are turning to newly manufactured military-style semiautomatic weapons. Existing evidence of past behavior is clear. If we wait, more damage will already have been done. Military-style semiautomatic weapons represent a danger to the lives of police officers and the general public. For the safety of our Nation's citizens, the Congress should act this year.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress, Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 19, 2001, in Pittsburgh, PA. A 43-year-old man attacked a 22-year-old Pakistani-born university student. The student was walking home from classes when he was alarmed to see a stranger charging after him, his arms already swinging. As he punched and kicked the student, the attacker yelled, ''Are you from Afghanistan?'' and ''I'm going to kill you!'' A nearby construction worker managed to stop the attacker, who then fled.

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 is 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.

CLUSTER BOMBS AND LANDMINES IN IRAQ

Mr. LEAHY. Mr. President, we can all celebrate the collapse of Saddam Hussein's brutal, corrupt regime. While much remains to be done to rebuild Iraq and reassure the Arab world that the United States is a liberator, not a conqueror, and that we have no intention of imposing our will on the Iraqi people, the demise of such a tyrant should be universally welcomed.

As we reflect on the past 3 weeks of war, we should above all pay tribute to the extraordinary courage and professionalism of our Armed Forces. They conducted themselves in ways that should make all of us proud.

We should also make note of the vast arsenal of modern weapons which enabled them to prevail. These weapons have devastated Iraqi troops, armor, and military infrastructure.

We have seen on television how effective our precision-guided missiles and bombs are, and we can only imagine how many civilian casualties were avoided because of their accuracy. It is partly because we have such increasingly accurate weapons that I want to discuss an issue that concerns me, and that is the use of cluster bombs by our forces in Iraq.

Cluster bombs, otherwise known as ''submunitions'' or ''bomblets,'' are strewn by aircraft or artillery over a wide area. They can be as small as a baseball. They are designed to detonate on impact and scatter deadly shrapnel in every direction. However, on average some 2–20 percent do not explode on impact. Instead, they remain on the surface of the ground, often hidden by sand or vegetation, where they lie in wait for some unsuspecting child, farmer, or other innocent person. They also pose a grave danger to U.S. forces in the area.

The United States military dropped millions of cluster bombs on Laos during the Vietnam war. Today, over 30 years later, they continue to maim and kill innocent people. The cost of removing these tiny, lethal weapons is prohibitive for an impoverished country like Laos. The United States Agency for International Development, through the Leahy War Victims Fund, is aiding some of the severely disabled victims of these indiscriminate weapons.

More recently, the United States has used cluster bombs in several countries, including Kosovo, Afghanistan, Iraq during the first gulf war, and, according to reports, again in Operation Iraqi Freedom.

In the first gulf war, U.S. planes dropped more than 24 million submunitions on Iraq, leaving roughly 1.2 million duds which resulted in over 1,600 Kuwaiti and Iraqi civilian deaths and an additional 2,500 injured following the war. The cost of clearing these duds and other unexploded ordnance was in the hundreds of millions of dollars.

In 1995 in Bosnia, U.S. military officers reportedly banned the use of cluster bombs because they were seen to present an unacceptable risk to civilians. However, 3 years later, during the NATO air campaign in Yugoslavia, U.S., British and Dutch military aircraft dropped more than 295,000 submunitions. The U.N. Mine Action Coordination Center estimated that more than 20,000 live bomblets remained after the war, and the International Committee of the Red Cross reported that in the year following the war there were 151 reported casualties due to cluster bombs.

The U.S. Air Force has used cluster bombs in Afghanistan, where, predictably, they have caused the deaths of innocent civilians. Additionally, the appearance of the yellow bomblets bore a

remarkable similarity to food aid parcels being airdropped. Civilians searching for food instead have found a hidden death. Also, the bright yellow of the bomblets attracted children, who thought it might be a toy. I read recently that this same problem has occurred in Iraq.

According to Human Rights Watch, television images and reports from journalists embedded with the U.S. military indicate that U.S. forces are using artillery projectiles and rockets containing large numbers of cluster munitions of a type which, according to a Department of Defense report, have a failure rate of 16 percent. This could result in hundreds or thousands of dangerous duds.

In addition, The Washington Post reported on March 29 that U.S. forces fired 18 Army Tactical Missile Systems against suspected air defense sites in support of a helicopter attack by units of the 101st Airborne Division on March 28. The payload of an ATACMS is 300 or 950 submunitions with a reported failure rate of 2 percent.

There is also apparently video footage of U.S. Marine artillery units supporting the 3rd Light Armored Reconnaissance Battalion using 155 millimeter artillery firing projectiles at Iraqi positions. A reporter described ''hundreds of grenades'' being fired at the Iraqis. These were apparently a type of submunition which have a 14 percent dud rate.

Submunitions that fail to detonate upon impact become de facto landmines. I have long opposed the use of landmines, and while cluster bombs differ from landmines in that the former are designed to explode on impact, I have urged the Department of Defense to only use cluster bombs that contain reliable self-destruct fuses. Modern self-destruct fuses, which cost only $8–10 each, could reduce the number of duds and the number of innocent casualties by more than 97 percent. Yet, the cluster bombs used by U.S. forces in Iraq do not, to my knowledge, include this available technology. Innocent people, whether Iraqis or Americans, should not die on account of a mere ten dollars.

I have also urged the Pentagon to adopt rules of engagement to prevent the use of cluster bombs in heavily populated areas. These weapons, which are designed to detonate over a wide area, are not accurate enough to prevent widespread death and injury to noncombatants.

I also want to speak about the use of landmines by Iraqi forces. As I mentioned, I oppose the use of landmines—specifically, landmines that do not have a man in the loop. According to Human Rights Watch and press reports, Iraqi soldiers and paramilitaries have strewn antipersonnel mines widely. They even stored mines inside a mosque in a town in northern Iraq, and placed them around the mosque. This is a war crime.

Iraq is not among the 132 countries that are party to the 1997 Ottawa Convention that outlaws any use, production, stockpiling or trade in antipersonnel mines. Neither is the United States. However, landmines that do not have a man in the loop which can distinguish between an enemy soldier and an innocent civilian are outmoded, inhumane weapons. They should be universally condemned.

Even before this latest conflict, Iraq was a heavily mined country. It is littered with mines from the Iraq-Iran war and from decades of internal fighting. Landmines were used in the first Gulf war by Iraq, as well as by U.S. forces. I am very pleased that U.S. forces apparently have not used landmines in Operation Iraqi Freedom. The fact that even without landmines our soldiers were able to destroy the Iraqi army in a matter of weeks is the latest evidence that landmines without a man in the loop should have no future in U.S. war fighting plans.

Landmines continue to take their toll. In the past 3 weeks, a cameraman working for the BBC was killed in Iraq when he stepped on a mine, and at least three U.S. marines have been injured by mines in separate incidents. It is a virtual certainty that innocent people will continue to be maimed and killed by mines in Iraq long after the fighting stops.

Saddam Hussein's army had a long history of atrocities against the Iraqi people, as well as against Iraq's neighbors. Its use of landmines is but another example of its utter disregard for innocent life.

Mr. EDWARDS. Mr. President, today is a new beginning for the people of free Iraq. The central authority in Baghdad has collapsed. Saddam Hussein's regime has lost control. But we know that there will be hard days ahead, days that will test our leadership, and test our willingness to engage with the rest of the world.

In the coming months and years, America faces the enormous challenge of helping the Iraqi people rebuild their lives in peace and prosperity. This challenge presents an extraordinary opportunity for the United States as well. If we do this right, we have a chance to ensure that the United States occupies a place of respect and admiration in the world. We must take advantage of this opportunity to strengthen relationships with our core allies, to revitalize the United Nations, and to demonstrate American leadership through respectful engagement with the rest of the world.

Today, in Baghdad and throughout Iraq, America's military forces are still in harm's way, and our thoughts and prayers are with them. Over the past 3 weeks, I have visited with some of our troops and their families in North Carolina at Fort Bragg, Camp Lejeune, and with the National Guard. These young men and women inspire us all. They are performing brilliantly, and they will bring us to a great military victory. I support our troops, and I support the cause for which they are fighting.

I have long argued that disarming Saddam, even if it meant the use of military force, was necessary to defend America's national interests. Last fall, I cosponsored and voted for the resolution authorizing force to disarm Saddam. As I argued then, lasting victory will require more than removing Saddam from power and disarming Iraq once and for all. Victory means winning the peace. We have proved that we have firepower. Now we must show that we have staying power.

We must make a major commitment to help rebuild Iraq. It is in America's national interest to help build an Iraq at peace with itself and its neighbors, because a democratic, tolerant and accountable Iraq will be a peaceful regional partner. Such an Iraq could serve as a model for the entire Arab world. If done right—with humility, patience and cooperation—this effort to rebuild Iraq will bring the world together and return America to a place where it is respected and admired.

The President has spoken about his commitment to Iraq's future and pledged that America will be there to help. We must hold him to these commitments, especially because in Afghanistan the President's rhetoric about winning the peace looks more and more like an empty promise.

In order to succeed, our actions to help Iraq must be based on four clear and simple principles.

First, the United States cannot do this alone. It would be a huge mistake if the reconstruction of Iraq were an ''American-only'' effort. The United Nations must play a central role, not just through passive endorsement, but through active engagement in reconstruction, humanitarian relief, and civil administration. In addition, we should be working with our NATO allies to find ways the alliance could be involved in providing security assistance, and we should seek help from our friends in the European Union. Finally, we need to work with regional partners such as Turkey and Jordan to support these efforts. A robust multilateral approach to this problem will not just increase the likelihood of success. It also will allow us to share the burden of the reconstruction costs with the rest of the international community. And it will help create a free Iraqi Government with legitimacy and authority in the region and the world.

Second, we must ensure the immediate security and safety of the Iraqi people, and help them achieve stability over the long-term. In the beginning, most of this security will have to come from American and British military forces. While our forces should be there as long as it takes, and not be restricted by artificial deadlines, an American military presence in Iraq cannot be indefinite. We should support creating a multinational force to follow our efforts, including a central role for NATO. There are many other urgent security needs as well, such as eliminating the instruments of Iraq's

system of repression and securing Iraq's borders and oil facilities. The Iraqi people will only be able to emerge from the shadow of Saddam Hussein's tyranny if they are freed from the threat of violence and lawlessness.

Third, the Iraqi people must be able to shape their own future, not have it imposed on them by outsiders. We can help create an environment for this to happen. This means, most fundamentally, a civil administration that protects three basic freedoms: freedom of speech, freedom of assembly, and freedom of movement. Iraq also must develop the rule of law. Its people need the international community's help in capturing and trying war criminals, developing legal institutions, educating judges and lawyers, and developing a legitimate police force.

The reconstruction effort must also begin to restore the basic elements of everyday life, from ensuring that they have adequate electricity and clean water to helping them at tasks life rebuilding their roads and schools.

All Iraqis must have confidence that they will have a voice in their future and that they will have a government that reflects their diversity. A free and democratic Iraq will not spring up by itself or overnight in a multi-ethnic, complicated society that has suffered under repression for generations. The Iraqi people deserve and need our help to rebuild their lives and to create a prosperous, thriving, open society. All Iraqis—including Sunnis, Shia and Kurds—deserve to be represented.

Fourth, the Iraqi people must have the tools to build a prosperous economy that is theirs alone. Iraqi has enormous natural resources and it has great potential. While we should help the Iraqi people tap into that potential, we have to make clear to the Iraqi people that the oil is theirs, and not for the U.S. or others to exploit. We also will have to explore all possibilities for debt restructuring and relief. Yet doing what it takes to succeed in Iraq is only one of the challenges we face. We have to develop a new kind of leadership throughout the world.

In the Middle East, it is time to engage to achieve a real peace between the Israelis and the Palestinians. I think this administration's disengagement in this crisis for the past 2 years has been a mistake. With the end of the conflict in Iraq, we have an opportunity to bring hope to this troubled region. We must seize it.

We also have to do far more to support democracy and freedom throughout the Middle East. No region of the world is more vital to our interests; yet no region is as undemocratic. Ultimately, there is no greater force for peace and prosperity—and against terrorism—than the promotion of democratic regimes that respect human rights and the rule of law, both within and beyond their borders.

Showing a new kind of leadership in the Middle East will also help begin to bridge the gap that has grown between America and many of our best friends in the world.

The most powerful country in the world can afford to heed the concerns of its friends. We cannot afford to lose them. Yet I am concerned that some would move us in the opposite direction, attempting to punish allies that disagreed with us on Iraq. This is wrong. We also have to take action to revitalize institutions like NATO and the United Nations. At times these institutions can be frustrating, but we must remember that it was America's vision and leadership that created these institutions. American leadership will be indispensable to helping them act to tackle today's challenges.

Make no mistake, America's families are safer in a world where America is looked up and respected, not isolated and resented. America's interests are best served when we lead in a way that brings others to our side, not drives them away. Like the generation of Franklin Roosevelt and Harry Truman, we have a chance to define how America uses its power—whether it is defending against threats, promoting prosperity and freedom or giving help to those who need it.

We have a chance to strengthen international institutions and alliances to help us meet these challenges. And we have a chance to ensure America's place of respect in the world. This is what we can achieve with the right kind of leadership.

NATIONAL LIBRARY WEEK

Mr. SARBANES. Mr. President, as a strong supporter of Federal programs to strengthen and protect libraries, I am pleased to recognize April 6 to 12 as National Library Week. This is the 45th anniversary of this national observance, and its longevity is evidence of the great importance our Nation places on libraries, books, reading, and education.

National Library Week grew out of 1950s research that showed a troublesome trend Americans were spending more money on radios and television and less on buying books. The American Library Association and the American Book Publishers joined forces and introduced the first National Library Week in 1958 in an effort to encourage people to read and to use their libraries.

When the free public library came into its own in this country in the 19th century, it was, from the beginning, a unique institution because of its commitment to the principle of a free and open exchange of ideas, much like the Constitution itself. Libraries continue to be an integral part of all that our country embodies: freedom of information, an educated citizenry, and an open and enlightened society.

I firmly believe libraries play an indispensable role in our communities. They promote reading and quench a thirst for knowledge among adults, adolescents, and children. More importantly, they provide the access and resources to allow citizens to obtain timely and reliable information that is so necessary in our fast-paced society. In this age of rapid technological advancement, libraries are called upon to provide not only books and periodicals, but many other valuable resources as well—audiovisual materials, computer services, internet access terminals, facilities for community lectures and performances, tapes, records, videocassettes, and works of art for exhibit and loan to the public.

Libraries provide a gateway to a new and exciting world for all—the place where a spark is often struck for disadvantaged citizens who, for whatever reason, have not had exposure to the vast stores of knowledge and emerging technology available to others. In this information age, they play a critical role in bridging the digital divide. Many families cannot afford personal computers at home, yet the role of computers has become almost necessary to a basic educational experience. The children of these families would suffer without the access to emerging technology that libraries provide to all patrons regardless of income. In addition, special facilities libraries provide services for older Americans, people with disabilities, and hospitalized citizens.

During National Library Week, I wish to salute those individuals who are members of the library community and work so hard to ensure that our citizens and communities continue to enjoy the tremendous rewards available through our libraries. Library staff, volunteers, and patrons work to ensure existing libraries run smoothly and have adequate resources, as well as advocate for increased funding and new libraries.

I am proud that Maryland is a State of readers. Recent statistics show that Maryland citizens borrowed more public library materials per person than those of almost any other State, nearly 9 per person. In addition, 67 percent of the State's population are registered library patrons. We are lucky to have 24 public library systems, providing a full range of library services to all Maryland citizens and a long tradition of open and unrestricted sharing of resources. The State Library Network that provides interlibrary loans to the State's public, academic, special libraries, and school library media centers has enhanced this policy. Marylanders have responded to this outstanding service by showing their continued enthusiasm and support for our public libraries.

I have worked closely with members of the Maryland Library Association, colleges and universities, and others involved in the library community throughout the State, and I am very pleased to join with them and citizens throughout the Nation in this week's celebration of National Library Week.

I look forward to continuing this relationship with those who enable libraries to provide the unique and vital services available to all Americans.

I ask unanimous consent that the attached op-ed by Carla Hayden, ''Don't Take Libraries for Granted,'' be printed in the RECORD.

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

[From the Baltimore Sun, Apr. 9, 2003]

DON'T TAKE LIBRARIES FOR GRANTED

(By Carla D. Hayden)

Americans have several beacons of light in what seem to be dark and fearful times, among them libraries.

The Enoch Pratt Free Library is proud to join the American Library Association in celebrating all that libraries have to offer during National Library Week this week.

Every day, more than 120,000 librarians nationwide connect students, families, senior citizens, businesspeople, teachers and professors with the information they need to be successful in a swiftly changing and increasingly troubled era.

Americans rely on libraries for help in finding jobs, using the Internet, demystifying technology, getting free access to thousands of books and videotapes and connecting with their neighbors and colleagues. And this couldn't be more relevant in Baltimore City, where more than 23 percent of our residents live at or below the poverty level.

The staff at the Pratt works to meet the needs of the community by providing seminars on race relations, building personal assets, entrepreneurship, computer training and more.

As the State Library Resource Center for Maryland, the Pratt is dedicated to assisting residents across the state in finding information they need 24 hours a day, seven days a week. We are a major support of the new ''Ask Us Now'' statewide library reference service, an invaluable resource. And it's all free of charge.

Librarians are committed to freedom of access to information and are fighting to ensure that such freedom remains intact so that no one is afraid to search for answers to important questions. It is often easy to take our libraries and librarians for granted.

Carla D. Hayden is the executive director of the Enoch Pratt Free Library and president-elect of the American Library Association.

DANIEL PATRICK MOYNIHAN

Mr. CHAFEE. Mr. President, I want to pay tribute to Daniel Patrick Moynihan, a man for whom I had the utmost respect.

One of the first times I was presiding in the Senate, Senator Moynihan was speaking from the floor. What he had to say and the way he said it made a lasting impression on me. The next day I asked for a copy of the statement and have kept it in my desk ever since. Senator Moynihan began: ''Mr. President, it is agreed that I will begin these brief remarks in order that our chairman might conclude the debate and proceed to the vote which I think has every prospect of being prodigious in its majority.'' He continued to explain one of the most complicated and difficult issues that we will deal with here in the Senate in a clear and concise manner. ''In very short order, I would simply like to recapitulate the four simple steps which will put Social Security on an actuarially sound basis for the next 75 years. They are: 1. Provide for an accurate cost-of-living adjustment. In 1996, the Boskin Commission originally estimated that the CPI overstates changes in the cost-of-living by 1.1 percentage points; now they say it is 0.8 of a percentage point; 2. Normal taxation of benefits; 3. Extend coverage to all newly hired State and local workers; 4. Increase the length of the computation period from 35 to 38 years.''

I don't know if this is the answer, but I will always refer to it when the topic of Social Security comes up. He laid out a plan with professorial clarity and a complete grasp of the issue. Whether you agreed or disagreed with Senator Moynihan, you had to appreciate his style.

Although I did not have a close working relationship with Senator Moynihan, I am truly impressed with the depth and breadth of his career achievements. From his pioneering work on Social Security reform, his almost encyclopedic knowledge of fiscal policy, to his championing of environmental and transportation issues, Senator Moynihan was the kind of Senator worth emulating. I also admired his ability to always look at the long view of the steps taken today and their impact on future generations. Senator Moynihan had an unwavering commitment to care for all people in need and was willing to cross party lines to accomplish his goals. His work as advisor to Presidents of both parties is testament to the high regard that official Washington had for his intellect and integrity.

As a dear friend of my father's for over 25 years, my strongest sense of the Senator comes from hearing my dad speak of Senator Moynihan with reverence and true admiration. Upon my father's passing, Senator Moynihan included an excerpt from a wonderful poem by W.B. Yeats, ''The Municipal Gallery Revisited,'' in his tribute. Those kind words were a great comfort to our family.

In the words of another poem by the poet W.B. Yeats:

The man is gone guided ye, unweary, through the long bitter way,
Ye by the waves that close in our sad nation,
Be full of sudden fears,
The man is gone who from this lonely station
—Has moulded the hard year . . .
Mourn—and then onward, there is no returning
He guides ye from the tomb;
His memory is a tall pillar, burning
Before the gloom

Our Nation will mourn, but Senator Moynihan would insist that we move on. On behalf of my mother and the Chafee family, we send our sincere condolences to Liz and all her family.

JEFF MADRICK ON ''THE U.S. ECONOMY AND THE IRAQI TIME BOMB''

Mr. KENNEDY. Mr. President, last Sunday's magazine section of the New York Times contained an excellent and insightful article by Jeff Madrick on the Nation's troubled economy as a result of huge tax cuts, the stalled economy, and the cost of the war and the reconstruction of Iraq. His article emphasizes the severe consequences we will face if we fail to bring the exploding deficit under control. Mr. Madrick's article, ''The Iraqi Time Bomb,'' will be of major interest to all of us in Congress, and I ask unanimous consent that it may be printed in the RECORD.

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

[From the New York Times Magazine Section, Apr. 6, 2003]

THE IRAQI TIME BOMB

(By Jeff Madrick)

The denial of economic reality that permeated Wall Street a few years ago has now migrated to Washington. On Wall Street, when companies did not generate the promised profits to justify the bubble in stock prices, many analysts told investors that profits did not matter. A new economy would be gauged by other measures, they insisted. Today, in similar fashion, as the federal budget has plunged into the red over the past two years, President Bush's economic team is telling the nation that deficits no longer matter.

At first, perhaps, the claim seemed plausible. Damage to the economy was not yet evident. And I, for one, am not a deficit hawk. At times, deficits are necessary to stimulate economic growth, and their dampening impact on private investment is occasionally exaggerated. But because of the Bush administration's policies and a weak economy, deficits are now approaching unmanageable levels, as they did in the 1980's. In fact, the federal government's fiscal health has deteriorated at a pace so stunning that few have yet caught up with the facts.

Here are some of those facts. Even without a war, the budget deficit would have exceeded $300 billion this year—just three years after the budget experienced a surplus of nearly $240 billion. (This was in the midst of a four-year run of substantial surpluses.) But with war costs escalating and revenues falling as a result of the flat economy, this year's deficit could rise to $400 billion. In fiscal year 2004, it is likely to be higher.

The president has asked Congress for $75 billion to finance war-related costs, but many think a more realistic estimate of the combined costs of war and reconstruction will be closer to $200 billion. More alarming is the decline of government revenues over the long run. Instead of generating $5 trillion to $6 trillion in surpluses over 10 years from rising tax revenues on growing incomes, the government will now probably come up nearly $2 trillion short through 2013. That recession and slower growth have shrunk tax revenues is predictable enough. But the sinking stock market has taken more of a toll than expected: there are no more outsize capital gains to tax. These yielded fat revenues in the late 1990's, when stocks were soaring, exaggerating the fiscal health of the nation. Now the train is running in reverse.

Finally, the Bush tax cuts have made long-term financial prospects significantly worse. Occasionally, tax cuts make sense. But the

$1.4 trillion tax-cut package passed in 2001 would have been more productive if it had been temporary and applicable to more taxpayers. Instead, it was skewed to the rich (who are prone to save rather than spend) and will be permanent—far from disappearing should the economy improve, the tax cut will grow larger. The administration proposed a second major tax cut in early January, estimated to cost $726 billion over 10 years, and it appears to be even less effective as a near-term stimulus: more than half of the total results from the elimination of taxes on dividends, an idea raised at Bush's economic summit in Waco, Tex., last August by a stockbroker, Charles Schwab. In addition, the Bush administration followed up this tax plan with a new budget that would extend the 2001 cuts three years past their expiration, costing another $600 billion.

The Senate has since voted to reduce the $726 billion budget request by half, but last week it was still far from clear that this change would prevail, given that the House passed a budget resolution that assumed the president's tax cuts.

The consequence of all these steps? Budget deficits as far as the eye can see. When Bush took office, his budget team estimated there would be a cumulative surplus of some $5.6 trillion over the next 10 years. Now, in light of the 2003 tax cuts and the new Bush budget, the Congressional Budget Office, the nonpartisan economic research arm of Congress, calculates that a long-term surplus will turn into a $1.8 trillion deficit between 2004 and 2013.

Unfortunately, economists outside the government estimate that the deficit will be even larger. William Gale and Peter Orszag of the Brookings Institution figure the deficit is likely to approach $2.5 trillion. The Wall Street economists William Dudley and Edward McKelvey of Goldman Sachs say that the deficit will exceed $4 trillion by 2013.

The timing of this looming deficit could not be worse. The retirement of baby boomers is about to begin en masse. In 10 years, the costs of Social Security and Medicare will start rising rapidly. By the 2020's, these costs will begin to reach roughly 12 to 15 percent of gross domestic product, compared with about 6.8 percent today. To put this in perspective, consider that all current federal expenditures now come to only 20 percent of G.D.P.

The concern about large deficits is that they reduce long-term economic growth and produce even less revenue for social programs. When large enough, government deficits require so much federal borrowing that they can displace private investment and push up interest rates on mortgages, consumer credit and business borrowing to levels that thwart home buying, consumer purchases and capital investment. (If interest rates should stop falling, home refinancing, which has recently been a principal source of more money for consumers, will be less attractive.) Big deficits also make the U.S. economy especially vulnerable to the loss of capital investment from overseas. Because Americans save so little, and because the nation imports much more than it exports, the United States must attract close to $500 billion of foreign capital annually to finance its growth. High budget deficits could easily reduce the confidence of foreign investors, who already own 36 percent of U.S. government debt. If they sell some of those securities, they will drive down the value of the dollar and U.S. investments will become even less attractive. Over the last year, the dollar has already fallen by 20 percent against some major currencies.

The slower growth that results from large deficits affects everybody. It leads to lost jobs, lower wages and fewer business opportunities. A return to the sluggish economy of the 1980's and early 1990's is not only possible but likely.

Straitened conditions are being felt already. States, starved for revenues because they cannot borrow to make up for the deficits caused by the economic downturn, are now cutting education, health and poverty programs aggressively. State and local governments are also complaining that money promised by Washington for homeland security has not arrived. And the president recently told the states that there's no extra money for them.

Given the pinch, how can we explain the administration's fiscal choices? Some economists in the Bush camp claim that lower tax rates and the elimination of taxes on dividends will both motivate people to work harder and investors to invest more. The economy will grow faster than traditional economic models anticipate, producing tax revenues that will reduce projected budget deficits. But most economists say there is a large measure of ideological wishful thinking here, reminiscent of the supply-side economists who advised President Reagan. Bush's economic advisers argue, for example, that the dividend tax cuts may generate more growth than any conventional economic model can predict by making investment in stocks more attractive; rising stock prices will in turn encourage investment. Few economists agree, however that eliminating dividend taxes will have more than a modest impact on stock prices. And even a 20 percent boost in stock prices from current levels does not restore them to their recent highs.

Narrow politics, of course, can partly account for the Bush administration's tax proposals. The tax cuts disproportionately benefit the wealthy, which, after all, is Bush's natural political constituency. But Bush's policies may, in fact, best be explained by another, more radical agenda. Extensive tax cuts will require Congress to limit the growth of social programs and public investment and undermine other programs altogether. If that is your vision of the best direction America can take, the strategy makes some sense. So, we were wrong about how dividend tax cuts stimulate growth, you can almost hear the Bush advisers thinking. No problem. Rising deficits will inevitably force Congress to starve those ''wasteful'' social programs. The prospective high deficits may even make it imperative to privatize Social Security and Medicare eventually. Social spending is the problem, goes the argument, not tax cuts.

The Bush administration has been inconsistent about its economic rationales since it earliest days in office. First, President Bush justified his $1.4 trillion tax cut in 2001 by claiming the government should return surpluses to taxpayers when the economy is strong. He found a convincing ally in Alan Greenspan, chairman of the Federal Reserve, whose influence was critical to the tax cut's passage. Then, as the economy appeared to be weakening, Bush argue that a tax cut was needed for an entirely different reason. It would stimulate the weak economy inherited from Bill Clinton. This made sense, but as noted, the tax package was not a short-term stimulus package.

When, by early 2003, there was no escaping the fact that the federal budget would remain in long-term deficit, the Bush administration's budget office did not issue the customary 10-year forecast. Instead, it only forecast a five-year budget. Beyond that, the Bush team said, economic events were too uncertain.

The Congressional Budget Office, however, does not enjoy such flexibility. It produced its standard 10-year outlook, which spelled out the obvious. But to give the Bush administration its due, a more recent C.B.O,. analysis also tried to take into account the possible growth incentives of the tax cuts. Based on at least seven different approaches to how government policies may affect future finances, none of the Congressional Budget Office's economic projections eliminated the future deficit. To the contrary, they all clustered around the original $1.8 trillion deficit figure that the office had calculated earlier. (The number of possible approaches to these forecasts alone suggests how little is truly known about the impact of such changes.) There would be a significant budget deficit every year through at least 2013, and, by implication, for many years after.

Can we live with these new deficits? If they remain as low as the budget office predicts, they will come to less than 1 percent of gross domestic product in the last few years of the forecast. Even so, this will probably impede economic growth. And by 2014, when baby boomer liabilities begin to rise rapidly, there will be no easy way to finance them. As Lee Price, the chief economist of the Senate Budget Committee Democrats, points out, by 2010 or even earlier, the nation will have to start gearing up to pay for the baby boom retirement. This will require either a very large tax increase or substantially reduced benefits. The financial markets will force the government to become more responsible about spending, or interest rates will be driven to damagingly high levels.

And that's based on a moderately optimistic forecast, one that assumes the economy grows at a healthy rate. Specifically, it assumes that productivity—the output per hour of work that is the primary source of growth—will rise by 2 percent year. That is a rate slower than that of the booming late 1990's, but it is considerably faster than the average pace between 1973 and 1995.

The C.B.O.'s projection incorporates only changes proposed in the Bush budget. But other costly adjustments will be necessary. Most important, tax cuts will subject as many as 40 million taxpayers to the higher alternative minimum tax. (The A.M.T. forces taxpayers, whose payments would be very low on account of large deductions, to pay at least a minimum rate.) The government will almost certainly change that, further reducing tax revenues. Also, some expiring tax provisions will surely be extended. Gale and Orszag of the Brookings Institution find that these factors add another $700 billion to the 10-year deficit. This does not include war expenditures.

Dudley and McKelvey of Goldman Sachs reach their estimated $4.2 trillion 10-year deficit by adding war and reconstruction estimates. They also expect that Congress will pass a substantially higher provision for reimbursement of prescription drug costs under Medicare than Bush has proposed, and that economic growth will be slower than anticipated.

These and several other realistic assumptions result in a federal deficit that is unquestionably a terrible burden. The deficits will require so much borrowing that the Goldman economists figure that the size of the federal debt will rise from 33 percent of gross domestic product to 49 percent. This, even more than annual deficits, alarms economists. The federal revenue needed just to pay the interest will be enormous.

Even this estimate does not take into account a realistic view of the costs of war and a new foreign-policy doctrine that could mean military involvement elsewhere. The $75 billion in appropriations that the Bush administration recently asked for covers only the first six months in Iraq. As for the

costs of peace, it is hard to make any sensible assessment. Some military experts claim that the presence of only 50,000 troops will be required. Gen. Eric Shinseki, the Army chief of staff, estimates that as many as 200,000 troops will be needed. That could well cost $50 billion a year. There are wide-eyed hopes that Iraq's oil revenues will defray most of the cost of reconstruction, but it will take several years to bring production to its full potential, as well as billions of dollars—and that's assuming there is complete peace. Some put the estimates of maintaining peace and building democracy in the hundreds of billions of dollars.

And implementing the new world vision Bush has discussed recently will require still more money. An ongoing presence in the Middle East beyond Iraq will soak up additional billions; potential crises in Korea and elsewhere will demand expensive attention. As I understand it, since even before the war started, the Defense Department has been spending money so fast it can't keep track of it. In sum, the new defense commitment looks open-ended.

The budget resolution the House passed last month makes clear the dollar amount of cuts in domestic programs that would have to be made in order to retain something close to fiscal balance in Washington in 10 years. They will involve deep cuts in programs from Medicaid to school lunches to college loans to, perhaps most cynically in the current environment, veterans' benefits. The Center on Budget and Policy Priorities calculates that reductions in mandatory programs for the elderly, veterans and the poor would come to $265 billion over 10 years. Another $210 billion would be lopped off of discretionary programs. The total of $475 billion is about equal to the tax reduction the president is requesting for the top 1 percent of earners in America.

To make this politically palatable, the reductions would be phased in. Average reductions would be only 1 percent in the first year, but they would rise rapidly and would average 4 percent over 10 years. In the worst years, the budget for Medicaid would be cut by 7 percent.

But the House bill is based on the C.B.O. projections. If other economists are right, and the deficits are considerably larger, still greater cuts will be required to balance the budget over time—in fact, perhaps double the amount. The Bush administration insists that it can live with the budget deficits and still maintain many of these programs. Denial has become almost a ritual. But it cannot have anticipated how quickly America's finances have turned to red, and it is not very likely that it is prepared to face the reality that the financial markets, if not Congress, will eventually impose on it. If there is no growth miracle on the horizon that would raise government revenues, the Bush administration's options will be limited not only domestically, which may be part of its design, but also militarily. The administration may well be compromising its own dearest goals.

The longer we wait, the harder it will be to correct the nation's finances. Most of us will be hit from both ends. Incomes will not rise the way they did in the late 1990's, and it will be difficult to save for retirement. The rising costs of education and health care will be harder for the typical family to meet. Meanwhile, government will not have the money to help. Programs may be cut across the board. And consider what was not accomplished in the 1990's, despite the nation's prosperity. More than 40 million Americans still have no health insurance. The United States has the highest proportion of children born into poverty in the developed world. The quality of education remains grossly unequal. Even two-worker families cannot afford quality day care. Much remains to be done.

There is time for a course correction. But the longer the nation waits, the harder the problems will be to fix. Forecasting the economic future, as everyone knows by now, is no sure thing. But the federal government simply cannot indefinitely spend so much more than it takes in. At some point, the nation will either raise taxes significantly or make painful cuts in cherished federal programs.

But as long as the full consequences of Bush's extravagance are not immediate, and war limits serious public criticism, the president may for now get away with promising guns and a little butter. And we will all pay for it.

ADDITIONAL STATEMENTS

TRIBUTE TO THE PIKEVILLE HIGH SCHOOL FRESHMAN CHEERLEADERS

● Mr. BUNNING. Mr. President, I rise to pay tribute to the Pikeville High School Cheerleaders of Pikeville, KY. The squad won the freshman division of the Universal Cheerleading Association's National High School Cheerleading Championship earlier this year.

The 23 members of the Pikeville High School Freshman squad were awarded the top prize in the freshman division in Orlando, FL. This is no easy feat and the citizens of Pikeville should be proud to have the members of the Pikeville High School Freshman Cheerleading Squad living and learning in their community. Their examples of hard work and determination should be followed by all in the Commonwealth.

I would like to congratulate the following members of the squad for their success: Lora Cleary, Leann Clevenger, Amanda Combs, Stephanie Combs, Amelia Crum, Amanda Hall, Olivia Harris, Jessica Justice, Kristen Kendrick, Olivia Kinney, Chelsey Kurkowski, Colby Kurkowski, Collins Kurkowski, Chelsi Lawson, Mackenzie Lewis, Leigh Brittany Lynn, Griffin Myers, Jordan Shull, Taylor Stone, Ali Tucker, Bianca Vanhoose, Bridget Walsh, and Erin Wheeler. But also, I want to congratulate their coaches, Mrs. Lisa Wheeler and Ms. Kendra Hamilton, and choreographer, Mr. Hank Light, along with their peers, faculty, administrators, and parents for their support and sacrifices they have made to help meet those achievements and dreams.●

COMMENDING FINDLAY HIGH SCHOOL

● Mr. DEWINE. Mr. President, on April 26, 2003, more than 1,200 students from across the United States will visit Washington, DC, to compete in the national finals of the ''We the People: The Citizen and the Constitution'' program, the most extensive educational program in the country developed specifically to educate young people about the Constitution and the Bill of Rights.

I am pleased and proud to announce that a class from Findlay High School from Findlay, OH, will represent our state in the upcoming national event. These young scholars have worked conscientiously to reach the national finals by participating at local and statewide competitions. As a result of their experience, they have gained a thorough knowledge and deep understanding of the fundamental principles and values of our constitutional democracy.

The 3-day We the People national competition is modeled after hearings in the Congress. The hearings consist of oral presentations by high school students before a panel of adult judges on constitutional topics. The students are given an opportunity to demonstrate their knowledge while they evaluate, take, and defend positions on relevant historical and contemporary issues. Their testimony is followed by a period of questioning by the judges who probe the students' depth of understanding and ability to apply their constitutional knowledge.

The We the People program provides curricular materials at upper elementary, middle, and high school levels. The curriculum not only enhances students' understanding of the institutions of American constitutional democracy, but it also helps them identify the contemporary relevance of the Constitution and Bill of Rights. Critical thinking exercises, problem-solving activities, and cooperative learning techniques help develop participatory skills necessary for students to become active, responsible citizens.

Furthermore, independent studies by the Educational Testing Service, ETS, revealed that students enrolled in the We the People program at upper elementary, middle, and high school levels significantly outperformed comparison students on every topic of the tests taken. Another study by Richard Brody at Stanford University discovered that students involved in the We the People program develop greater commitment to democratic principles and values than do students using traditional textbooks and approaches. Researchers at the Council for Basic Education noted:

> [T]eachers feel excited and renewed. . . . Students are enthusiastic about what they have been able to accomplish, especially in terms of their ability to carry out a reasoned argument. They have become energized about their place as citizens of the United States.

The class from Findlay High School is currently preparing for their participation in the national competition, and it is inspiring how these young people advocate the fundamental ideals and principles of our government—ideas that identify us as a people and bind us together as a Nation. I send these fine young constitutional experts my best wishes as they compete in the We the People national finals.●

IN RECOGNITION OF ARCHBISHOP VATCHÉ HOVSEPIAN ON THE 52ND ANNIVERSARY OF HIS ORDINATION AND FOR HIS SERVICE TO THE COMMUNITY

● Mrs. BOXER. Mr. President, I rise today to bring to the Senate's attention His Eminence Archbishop Vatché Hovsepian, on the 52nd anniversary of his ordination.

Archbishop Hovsepian is an inspirational and dynamic leader in the Armenian Church, and this milestone anniversary is a symbol of the Archbishop's 52 years of dedicated service and commitment to the Armenian people and the greater community in which he serves. Since 1996, he has served as the Archbishop of the Western Diocese of the Armenian Church of North America.

During his 50 years of service to his Church and community, His Eminence Vatché Hovsepian has been very active. The Archbishop has met with five Presidents of the United States, along with various religious leaders and political figures from all over the world, created new parishes, Armenian schools and summer camps. His Eminence Vatché Hovsepian has traveled and studied all over the world, thus allowing him to have the knowledge of many customs, traditions, cultures and languages.

The Archbishop has spoken eloquently about the Armenian Genocide and the importance that it be remembered by Armenians and people around the world.

He has addressed the California State legislature and been warmly received. He is widely known for his good works, including assistance with reconstruction in Armenia after the 1988 earthquake.

His Eminence Archbishop Vatché Hovsepian is a warm, compassionate and charismatic leader who is most deserving of the outpouring of admiration that greets him today and each day. I am honored to pay tribute to him, and I encourage my colleagues to join me in congratulating the Archbishop on this grand anniversary.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:14 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 bills, in which it requests the concurrence of the Senate:

H.R. 1036. An act to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

H.R. 1664. An act to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 141. Concurrent resolution expressing the sense of the Congress that the Internal Revenue Code of 1986 should be fundamentally reformed to be fairer, simpler, and less costly and to encourage economic growth, individual liberty, and investment in American jobs.

H. Con. Res. 142. Concurrent resolution congratulating the Syracuse University men's basketball team for winning the 2003 NCAA Division I men's basketball national championship.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 151) to amend title 18, United States Code, with respect to sexual exploitation of children.

MEASURES REFERRED

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

H.R. 1036. An act to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; to the Committee on the Judiciary.

H.R. 1664. An act to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes; to the Committee on Finance.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 141. Concurrent resolution expressing the sense of the Congress that the Internal Revenue Code of 1986 should be fundamentally reformed to be fairer, simpler, and less costly and to encourage economic growth, individual liberty, and investment in American jobs; to the Committee on Finance.

MEASURES PLACED ON THE CALENDAR

The following concurrent resolution was read, and placed on the calendar:

H. Con. Res. 142. Concurrent resolution congratulating the Syracuse University men's basketball team for winning the 2003 NCAA Division I men's basketball national championship.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1876. A communication from the Secretary of the Army, Department of Defense, transmitting, pursuant to law, the Selected Acquisition Report (SAR) which state that breaches of 15 percent or more occurred in both Program Acquisition Unit Cost (PAUC) and Average Procurement Unit Cost (APUC) of the Army Tactical Missile System (ATACMS)/BAT, received on April 7, 2003; to the Committee on Armed Services.

EC–1877. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, the report relative to an interagency audit of policies and procedures pertaining to the ''export of technologies and technical information to countries of concern'' received on March 28, 2003; to the Committee on Armed Services.

EC–1878. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, transmitting, pursuant to law, the report of the National Defense Stockpile (NDS) Annual Materials Plan (AMP) for Fiscal Year (FY) 2004, received on April 1, 2003; to the Committee on Armed Services.

EC–1879. A communication from the President and Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, the report of a statement to the U.S. Senate with respect to a transaction involving U.S. exports to the Kingdom of the Netherlands, received on April 4, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1880. A communication from the Acting General Counsel, Office of the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''National Flood Insurance Program; Standard Flood Insurance Policy 68 FR 9895 (RIN 3067–AD33)'' received on April 3, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1881. A communication from the Acting General Counsel, Office of the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility 68 FR 9897 (Docket No.–7803)'' received on April 3, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1882. A communication from the Assistant General Counsel, Regulations, Office of Public and Indian Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Public Housing Homeownership Program (RIN 2577–AC15) (FR–4504–F–02)'' received on April 3, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1883. A communication from the Acting General Counsel, Office of the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Disclosure of Financial and Other Information (RIN 2550–AA25)'' received on April 2, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1884. A communication from the Acting General Counsel, Office of the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Amendments to Official Staff Commentary for Truth in Lending

(Regulations Z)'' received on March 31, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1885. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, the report relative to the financial statements of the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), and the FSLIC Resolution Fund (FRF); to the Committee on Banking, Housing, and Urban Affairs.

EC–1886. A communication from the Assistant General Counsel, Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''HOME Investment Partnerships Program; CORRECTION (RIN 2501–AC30) (FR–4111–C–04)'' received on April 1, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1887. A communication from the Chief Judge, Superior Court of the District of Columbia, transmitting, pursuant to law, the report relative to the implementation of the District of Columbia Family Court Act of 2001 submitted April 4, 2003; to the Committee on Governmental Affairs.

EC–1888. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the Department of Transportation Management Decisions and Final Actions on the Office of Inspector General Audit Recommendations for the period ending September 30, 2002; to the Committee on Governmental Affairs.

EC–1889. A communication from the Senior Vice-President and Chief Financial Officer, transmitting, pursuant to law, the report relative to the Export-Import Bank audit that was performed by Deloitte and Touche LLP, received on April 3, 2003; to the Committee on Governmental Affairs.

EC–1890. A communication from the Chief Judge, Superior Court of the District of Columbia, transmitting, pursuant to law, the report relative to the implementation of the District of Columbia Family Court Act of 2001 submitted March 31, 2003; to the Committee on Governmental Affairs.

EC–1891. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–33 ''Emancipation Day Fund Temporary Act of 2003'' received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1892. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–32 ''Kings Court Community Garden Equitable Real Property Tax Relief Temporary Act of 2003'' received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1893. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–31 ''Housing Notice Temporary Amendment Act of 2003'' received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1894. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–30 ''Marvin Caplan Memorial Designation Act 2003'' received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1895. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–29 ''Closing of a Public alley in Square 341 S.O. 02–4058, Act of 2003'' received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1896. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 15–28 ''William H. Rumsey, Sr. Aquatic Center Designation Act of 2003'' received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1897. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the Annual report summarizing the Securities and Exchange Commission's activities, received on April 3, 2003; to the Committee on Governmental Affairs.

EC–1898. A communication from the Chairman, National Labor Relations Board, transmitting, pursuant to law, the report of a Document consisting of the Performance Plan for fiscal year (FY) 2004 and the Program Performance Report for FY 2002; to the Committee on Governmental Affairs.

EC–1899. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report of the Financial Report of the United States Government for Fiscal Year 2002, received on March 31, 2003; to the Committee on Governmental Affairs.

EC–1900. A communication from the Vice Counsel and Corporate Secretary, Legal Services Corporation, transmitting, pursuant to law, the Sunshine Act report for the Legal Services Corporation for 2002, received on April 1, 2003; to the Committee on Governmental Affairs.

EC–1902. A communication from the Assistant Secretary, Administration and Management, Department of Labor, transmitting, pursuant to law, the report of the Department of Labor's (DOL) Commercial Activities Inventory for Fiscal Year 2002, received on April 1, 2003; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–77. A joint resolution adopted by the Legislature of the State of Wyoming relative to tax treatment of Health insurance; to the Committee on Finance.

JOINT RESOLUTION NO. 1

Whereas, the high cost of health insurance has created a large number of uninsured citizens in the United States and the State of Wyoming;

Whereas, those without health insurance are less likely to receive adequate health care;

Whereas, insurance purchasing decisions are to a large extent made by employees and not insurance beneficiaries;

Whereas, overraliance on empoloyer-provided health insurance impedes worker mobility;

Whereas, spiraling health care costs are in part caused by a lack of active consumer participation in health care markets;

Whereas, employers can deduct the full cost of employee health insurance as a business expense, while individuals may not: Now, therefore, be it

Resolved by the members of the Legislature of the State of Wyoming:

Section 1. That the Wyoming State Legislature petitions the Congress of the United States to equalize the tax treatment of employer-provided and individually purchase health insurance by creating a tax credit for the full amount of insurance purchased by individuals.

Section 2. That the Secretary of State of Wyoming transmit copies of the resolution to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the United States Congress and to the Wyoming Congressional Delegation.

POM–78. A joint resolution adopted by the Legislature of the State of Wyoming relative to the declaration of an emergency in watersheds located in the national forests within Wyoming; to the Committee on Environment and Public Works.

Whereas, the Wyoming State Legislature finds that:

(a) A state of emergency exists in Wyoming due to a shortage, and ever diminishing aggregate total supply, of water available to its citizens, communities, livestock, wildlife and their habitats.

(b) Virtually all Wyoming communities have been seriously threatened and impacted by a shortage of available water within the last calendar year.

(c) Virtually all Wyoming waterways are either presently experiencing, or within the last calendar year have experienced, a significant depletion of available water as well as the streams and tributaries that contribute water to the waterways.

(d) Most Wyoming livestock, wildlife and threatened or endangered species are now or are likely to be seriously imperiled by a shortage of available water either directly or indirectly via the impact of the water shortage on their supply of forage or prey base.

(e) Due to the existence of this declared state of emergency it is imperative that Wyoming promptly take necessary actions to restore and increase the aggregate total supply of water available within the state.

(f) This state's aggregate total supply of water is significantly dependent upon watersheds located on federal lands. To achieve an increase in the aggregate total supply of water in Wyoming it is imperative for the state to take appropriate actions that may be available to remedy the presently existent deteriorated conditions of these watersheds.

(g) The existence of excessive overgrowth on Wyoming's federal forests has been publicly acknowledged and declared both by state officials and in 2002 by the President of the United States, members of his cabinet, other administration officials and numerous members of the United States Congress.

(h) Numerous state and local Wyoming elected officials and other citizens have repeatedly petitioned the United States Forest Service over the last several years to take actions needed to remove or eliminate the excessive forest overgrowth conditions that exist on watersheds on the federal lands within the state of Wyoming. All the petitions have been effectively ignored by the Secretary of Agriculture and other officers within the federal government under her authority, reflecting what can only be characterized as their utter disregard for both the needs of Wyoming citizens and wildlife, and Wyoming's lawful rights to the waterflows.

(j) The United States Congress, in pertinent part, expressly provided that ''No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of waterflows . . .'' 16 U.S.C. §475. Congress reaffirmed this directive when it passed the Multiple-Use Sustained-Yield Act of 1960 by specifically stating that the national forests ''shall be administered'' for ''watershed'' purposes, 16 U.S.C. §528 et seq.

(k) The United States Supreme Court in United States v. New Mexico, 438 U.S. 696 (1978) stated ''Congress has evidenced its continuing concern with enhancing the water supply for nonforest use by specifically authorizing the President to set aside and protect national forest lands needed as sources of municipal water supplies. 16 U.S.C. §552a.''

Moreover, the Supreme Court further stated that the ''States have exclusive control of the distribution of water on public lands and reservations.''

(m) The following facts are indisputable:

(i) Wyoming's watersheds located on federal lands presently contain millions of excess and unnecessary junipers and conifers;

(ii) Each of these excess trees individually consumes from ten (10) to two hundred (200) gallons of water each and every day of the year, depending on its size;

(iii) Thus, in the aggregate, the millions of excess trees on Wyoming's watersheds unnecessarily consume hundreds of acre feet of water each and every day of the year;

(iv) The continued existence of the overgrowth serves no legitimate federal or state purpose. In fact, these conditions have been previously declared to constitute a state of emergency because the catastrophic fire potential they create poses a present unreasonable risk to the lives and property of Wyoming citizens;

(v) The federal government's persistent failure to remove the excess tree overgrowth from Wyoming's watersheds prevents downstream flow to Wyoming in violation of the state's legal entitlement to the diverted waters under both state and federal law.

(n) Based on the foregoing findings of fact, the following conclusions are indisputable:

(i) Wyoming has a legal entitlement to the waterflows that either are or may be derived from federal lands within the state;

(ii) The excessive overgrowth on the watersheds is depriving the state of Wyoming of its legal entitlement to the waters in direct violation of the mandates of the United States Congress and the rulings of the United States Supreme Court;

(iii) Therefore, to abate this illicit diversion of Wyoming's water, to increase the aggregate total supply of water available in and to Wyoming in the future, and to thereby remedy the state of emergency declared by this act, Wyoming hereby now affirms and asserts the supremacy of its right over that of the federal government to the ownership and use of those waters that are currently being unlawfully diverted by the federal government without justification to supply the demands of the needless federal forest overgrowth on Wyoming's watersheds: Now, therefore, be it

Resolved by the members of the Legislature of the State of Wyoming:

Section 1. That the legislature declares the existence of a state of emergency due to a shortage of water available to Wyoming caused in significant part by the deteriorating conditions of the state's watersheds located on federal lands. These conditions are due in turn to unnecessary excessive forest overgrowth. This overgrowth is unlawfully diverting Wyoming's waterflows, thus depleting Wyoming's total supply of water available to its citizens, communities, livestock, wildlife and wildlife habitats.

Section 2. (a) The legislature further finds that the continued existence of the state of emergency poses a direct threat to the health, safety, well-being and economic viability of Wyoming's citizens and to the continued health and viability of its communities, livestock, wildlife and wildlife habitats. It is therefore imperative that Wyoming take such actions as may be necessary to mitigate or eliminate the federal forest watershed overgrowth conditions that shall include the following:

(i) The state shall take any and all actions necessary to obtain a transfer to the state of such limited jurisdiction over federal lands as may be necessary to enable the state to take appropriate actions that are needed to restore the state's watersheds to a condition of health, and to increase waterflows available within Wyoming; and

(ii) Upon the transfer of the limited jurisdiction, the state shall utilize the police and contract powers of the state to the extent necessary to garner the public and private resources and services needed to mitigate and ultimately eliminate the state of emergency hereby declared.

Section 3. (a) The legislature further finds that to further achieve the objectives of this resolution, within ninety (90) days of this resolution, the governor of this state shall consider:

(i) Taking actions necessary and appropriate pursuant to the provision of 7 U.S.C. §2268 and any other state or federal law that may be determined relevant by the attorney general of this state in order to request and obtain from the United States Secretary of Agriculture limited jurisdiction over relevant federal lands as may be necessary for Wyoming to restore its watersheds to a condition of health and thereby increase the waterflows that may be derived from the watersheds; and

(ii) Including within the application to the United States Secretary of Agriculture for the transfer of the limited jurisdiction an express provision that any acceptance by Wyoming of a transfer of limited jurisdiction to restore watershed health upon federal lands shall be conditioned on Wyoming's receipt of sufficient federal funds determined by Wyoming to be necessary to enable the state to perform the actions needed to mitigate or eliminate the state of emergency created by the federal government's impairment of Wyoming's watersheds, waterflows and aggregate water supplies.

Section 4. (a) The legislature further finds that in the event limited jurisdiction coupled with necessary federal funds are not made available by the United States Secretary of Agriculture to Wyoming within one hundred eighty (180) days from the date this resolution is passed, the governor shall direct the Wyoming attorney general to consider the preparation, filing and pursuit of a lawsuit on behalf of Wyoming to:

(i) Obtain a judicial declaration of Wyoming's lawful right to the waterflows originating from watersheds located on federal lands within the state;

(ii) Obtain a judicial declaration of the impairment of the state's rights to waterflows originating on federal lands as a foreseeable consequence of excessive and unjustifiable forest overgrowth; and

(iii) Compel the United States, the Secretary of Agriculture and the Forest Service to take such actions as may be determined by a court of law to be necessary, appropriate and lawful to mitigate or eliminate the state of emergency declared by this act.

Section 5. That the Secretary of State of Wyoming transmit copies of this resolution to the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the United States Congress, to the United States Secretary of Interior and the United States Secretary of Agriculture and to the Wyoming Congressional Delegation.

POM–79. A concurrent resolution adopted by the Legislature of the State of Kansas relative to urging the Federal Energy Regulatory Commission to work to develop sufficient electric transmission facility infrastructure and design and implement regional transmission; to the Committee on Energy and Natural Resources.

HOUSE CONCURRENT RESOLUTION NO. 5007

Whereas, The existing transmission systems in the United States is an extensive network of high-voltage powers lines which transport electricity from generators to consumers and which must accommodate the nation's growing demand for reliable and affordable power; and

Whereas, The system is rapidly becoming congested due to growth in demand, investment in new generation facilities and lack of investment in expansion and improvement of transmission facilities; and

Whereas, Expansion and improvement of the transmission system is vital to the national interest because congestion creates bottlenecks which result in decreased reliability less competition, higher prices to consumers and increased infrastructure vulnerability; and

Whereas, The United States Department of Energy recognizes that Kansas transmission system is vital to the national interest because congestion creates bottlenecks which result in decreased reliability, less competition, higher prices to consumers and increased infrastructure vulnerability; and

Whereas, The existing transmission systems is increasingly incapable of providing reliable service to the nature load in Kansas and does not have the capacity to support economic development of renewable and fossil-fuel resources or to economically dispatch power within the state; and

Whereas, The existing transmission system experience significant constraints to the importation of additional power from outside the state and export of additional power to markets beyond the state's boundaries in support of national energy reliability and clean air standards; and

Whereas, The leadership of the Federal Energy Regulatory Commission is crucial to resolving issues related to cost recovery of transmission facility upgrades and regional transmission system reliability issues: Now, therefore, be it

Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein, That the Legislature urges the Federal Energy Regulatory Commission to work with the State of Kansas in development of sufficient transmission facility infrastructure to support the state's economic development efforts and the nations growing energy, security and reliability needs, along with the design and implementation of regional transmission organizations and cost recovery mechanisms, and be it further

Resolved, That the Secretary of State is directed to provide a copy of this enrolled resolution to each member of the Federal Energy Regulatory Commission, the President of the United States, the Vice-President of the United States, the United States Secretary of Energy, the President Pro Tempore of the United States Senate, the Minority leader of the United States House of Representatives, each member of the Kansas Congressional delegation, he State Corporation Commission, the Nebraska Power Review Board, the Missouri Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

I hereby certify that the above Concurrent Resolution originated in the House, and was adopted by that body.

POM–80. A Senate resolution adopted by the Legislature of the State of Michigan relative to expressing support to the war in Iraq; to the Committee on Foreign Relations.

SENATE RESOLUTION NO. 37

Whereas, While our nation has faced a wide range of threats to our freedom over the years, the unique war on terrorism in which we now find ourselves engaged demands an exceptional commitment. From our leaders and our military to our citizens and state and local governments, we all must work together to increase the security of our homeland. In the aftermath of September 11th,

our country must deal with the entire range of terrorist threats before us; and

Whereas, The ongoing preparations for a military action to deal with threats from Iraq and its weapons of mass destruction are a direct and necessary response for the United States and our allies. As the world learns more about the links between the reign of hatred of Saddam Hussein and international terrorist organizations, including those affiliated with Osama bin Laden, the gravity of the world's situation has become increasingly clear. The smokescreen of misinformation that has hampered United Nations efforts in Iraq must not be permitted to jeopardize the homeland security of our nation or the stability of other parts of the world; and

Whereas, A number of Michigan citizen soldiers are engaged in the noble effort to defend our liberties. In addition to those already serving in the military, several reserve units have been called into duty. It is important to voice our support for all of them, as their courage and steadfastness in the face of war represents the highest standard of citizenship. For the families with loved ones in the military, the world's tensions take on much more intensity. Once again, we are reminded that the true cost of freedom is clearly beyond measure; and

Whereas, Unity in the face of adversity is essential for success in any grave battle. The people of this state, well aware of the high stakes of any military action, stand behind our President in his work to protect peace in our troubled world: Now, therefore, be it

Resolved by the Senate, That we express support for the President's strategy for protecting the security of the United States through our efforts in Iraq and to express support for the men and women of our military and their families; and be it further

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 880. An original bill to amend the Child Care and Development Block Grant Act of 1990 to reauthorize the Act, to improve early learning opportunities and promote school preparedness, and for other purposes (Rept. No. 108-37).

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment with a preamble:

S. Res. 117. An original resolution recognizing the 100th anniversary of the founding of the Laborers' International Union of North America, and congratulating members and officers of the Laborers' International Union of North America for the union's many achievements.

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 538. A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 703. A bill to designate the regional headquarters building for the National Park Service under construction in Omaha, Nebraska, as the ''Carl T. Curtis National Park Service Midwest Regional Headquarters Building''.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

Army nomination of Maj. Gen. H. Steven Blum.

By Mr. LUGAR for the Committee on Foreign Relations.

Dennis L. Schornack, of Michigan, to be Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

Joseph LeBaron, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Mauritania.

Reno L. Harnish, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Azerbaijan.

Heather M. Hodges, of Ohio, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Moldova.

Gregory W. Engle, of Colorado, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Togolese Republic.

Eric S. Edelman, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Turkey.

Jay T. Snyder, of New York, to be a Member of the United States Advisory Commission on Public Diplomacy.

Harold C. Pachios, of Maine, to be a Member of the United States Advisory Commission on Public Diplomacy.

Elizabeth F. Bagley, of the District of Columbia, to be a Member of the United States Advisory Commission on Public Diplomacy.

Marie Sophia Aguirre, of the District of Columbia, to be a Member of the United States Advisory Commission on Public Diplomacy.

Marie Sophia Aguirre, of the District of Columbia, to be a Member of the United States Advisory Commission on Public Diplomacy.

Barbara McConnell Barrett, of Arizona, to be a Member of the United States Advisory Commission on Public Diplomacy.

Barbara McConnell Barrett, of Arizona, to be a Member of the United States Advisory Commission on Public Diplomacy.

Charles William Evers III, of Florida, to be a Member of the United States Advisory Commission on Public Diplomacy.

Charles William Evers III, of Florida, to be a Member of the United States Advisory Commission on Public Diplomacy.

Wayne E. Neill, of Nevada, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Benin.

Stephen D. Mull, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lithuania.

Ralph Frank, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Croatia.

William M. Bellamy, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kenya.

Helen R. Meagher La Lime, of Florida, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Mozambique.

Pamela J. H. Slutz, of Texas, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Mongolia.

Stephen M. Young, of New Hampshire, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kyrgyz Republic.

By Mr. HATCH for the Committee on the Judiciary.

Cecilia M. Altonaga, of Florida, to be United States District Judge for the Southern District of Florida.

Susan G. Braden, of the District of Columbia, to be a Judge of the United States Court of Federal Claims for a term of fifteen years.

Charles F. Lettow, of Viginia, to be a Judge of the United States Court of Federal Claims for a term of fifteen years.

By Mr. SPECTER for the Committee on Veterans' Affairs.

*John W. Nicholson, of Virginia, to be Under Secretary of Veterans Affairs for Memorial Affairs.

*Bruce E. Kasold, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

*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.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

NOMINATIONS DISCHARGED

On request by Mr. MCCONNELL and by unanimous consent, it was ordered, That the following nominations be discharged from the Committee on Health, Education, Labor and Pensions.

DEPARTMENT OF EDUCATION

Karen Johnson, of Virginia, to be Assistant Secretary for Legislation and Congressional Affairs, Department of Education.

NATIONAL SCIENCE FOUNDATION

Barry C. Barish, of California, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Delores M. Etter, of Maryland, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Daniel E. Hastings, of Maryland, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Douglas D. Randall, of Massachusetts, to be a Member of the National Science Board,

National Science Foundation, for a term expiring May 10, 2008.

Jo Anne Vasquez, of Arizona, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

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. ALLARD:

S. 850. A bill to amend the Internal Revenue Code of 1986 to expand S corporation eligibility for banks, and for other purposes; to the Committee on Finance.

By Mr. ENSIGN (for himself, Mr. BROWNBACK, Mr. INHOFE, Mr. TALENT, Mr. SANTORUM, Mr. GRASSLEY, Mr. ENZI, Mr. SESSIONS, Mr. ALLEN, Mr. BUNNING, Mr. FITZGERALD, Mr. CHAMBLISS, Mr. DEWINE, Mr. MCCONNELL, Mr. COLEMAN, Mr. KYL, Mr. NICKLES, Mr. GRAHAM of South Carolina, Mr. BOND, Mr. HAGEL, Mr. CRAIG, Mr. MCCAIN, and Mr. HATCH):

S. 851. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

By Mr. DEWINE (for himself, Mr. DASCHLE, Mr. SMITH, and Mr. LEAHY):

S. 852. A bill to amend title 10, United States Code, to provide limited TRICARE program eligibility for members of the Ready Reserve of the Armed Forces, to provide financial support for continuation of health insurance for mobilized members of reserve components of the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 853. A bill to amend title XVIII of the Social Security Act to eliminate discriminatory copayment rates for outpatient psychiatric services under the medicare program; to the Committee on Finance.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 854. A bill to authorize a comprehensive program of support for victims of torture, and for other purposes; to the Committee on Foreign Relations.

By Ms. SNOWE (for herself, Mr. BOND, and Mr. GRASSLEY):

S. 855. A bill to amend the Internal Revenue Code of 1986 to modify the unrelated business income limitation on investment in certain debt-financed properties; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mr. DASCHLE, and Mr. JOHNSON):

S. 856. A bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, and Mr. COCHRAN):

S. 857. 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; to the Committee on Finance.

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

S. 858. A bill to extend the Abraham Lincoln Bicentennial Commission, and for other purposes; to the Committee on the Judiciary.

By Mr. CORZINE (for himself, Ms. SNOWE, Ms. CANTWELL, Mr. SMITH, Mr. DODD, Mr. LEAHY, Mrs. MURRAY, Mr. DURBIN, Mr. LAUTENBERG, and Mr. BINGAMAN):

S. 859. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Nebraska:

S. 860. A bill to amend title 36, United States Code, to designate the oak tree as the national tree of the United States; to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself, Mr. GREGG, Mr. KERRY, Ms. SNOWE, Mr. INOUYE, Mr. REED, Mr. BREAUX, Mr. DEWINE, Mr. SARBANES, Mr. BIDEN, Mr. KENNEDY, Ms. MIKULSKI, Mr. COCHRAN, Mrs. MURRAY, Mr. CORZINE, Ms. COLLINS, Mr. DODD, Mr. LEVIN, Mr. NELSON of Florida, Mr. WYDEN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. CANTWELL, and Mr. CHAFEE):

S. 861. A bill to authorize the acquisition of interests in undeveloped coastal areas in order to better ensure their protection from development; to the Committee on Commerce, Science, and Transportation.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, Ms. COLLINS, Mr. LEVIN, and Mr. JOHNSON):

S. 862. A bill to promote the adoption of children with special needs; to the Committee on Finance.

By Mr. EDWARDS (for himself, Mr. MILLER, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 863. A bill to amend the Higher Education Act of 1965 to allow soldiers to serve their country without being disadvantaged financially by Federal student aid programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. EDWARDS (for himself, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 864. A bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCAIN (for himself, Mr. DORGAN, Mr. BROWNBACK, and Mr. ENSIGN):

S. 865. A bill to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to the Committee on Commerce, Science, and Transportation.

By Mr. KOHL (for himself, Mr. DURBIN, Mr. SCHUMER, Mr. CORZINE, Mrs. FEINSTEIN, Mr. REED, and Mr. LAUTENBERG):

S. 866. A bill to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun and provide safety standards for child safety locks; to the Committee on the Judiciary.

By Mr. BURNS:

S. 867. A bill to designate the facility of the United States Postal Service located at 710 Wick Lane in Billings, Montana, as the ''Ronald Reagan Post Office Building''; to the Committee on Governmental Affairs.

By Mr. SMITH:

S. 868. A bill to amend the Coos, Lower Umpqua, and Siuslaw Restoration Act to provide for the cultural restoration and economic self-sufficiency of the Confederation Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, and for other purposes; to the Committee on Indian Affairs.

By Mr. HARKIN (for himself, Ms. SNOWE, Mr. INOUYE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Mr. CORZINE, Mr. BIDEN, Mr. SPECTER, Ms. LANDRIEU, Mr. JOHNSON, Mrs. LINCOLN, Mr. HOLLINGS, Ms. MIKULSKI, Mrs. CLINTON, and Ms. COLLINS):

S. 869. A bill to amend title XVIII of the Social Security Act to provide for enhanced reimbursement under the medicare program for screening and diagnostic mammography services, and for other purposes; to the Committee on Finance.

By Mr. HARKIN (for himself and Mr. COCHRAN):

S. 870. A bill to amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program; considered and passed.

By Mr. BIDEN (for himself, Mr. LUGAR, Mr. KENNEDY, Mr. HAGEL, Mr. DOMENICI, and Mr. FEINGOLD):

S. 871. A bill to provide for global pathogen surveillance and response; to the Committee on Foreign Relations.

By Mr. SANTORUM:

S. 872. A bill to authorize appropriations for fiscal years 2004 and 2005 for United States contributions to the International Fund for Ireland, and for other purposes; to the Committee on Foreign Relations.

By Mr. BINGAMAN:

S. 873. A bill to authorize funding for catalysis science and engineering research and development at the Department of Energy for fiscal years 2004 through 2009, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. TALENT (for himself, Mr. SCHUMER, and Mr. GRAHAM of South Carolina):

S. 874. A bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes; to the Committee on Finance.

By Mr. KERRY (for himself, Mr. SANTORUM, Mr. SARBANES, Mr. ALLARD, Mr. DASCHLE, Mr. KENNEDY, Ms. STABENOW, and Mrs. CLINTON):

S. 875. A bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes; to the Committee on Finance.

By Mr. WYDEN (for himself, Ms. COLLINS, and Mrs. CLINTON):

S. 876. A bill to require public disclosure of noncompetitive contracting for the reconstruction of the infrastructure of Iraq, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BURNS (for himself, Mr. WYDEN, Mr. STEVENS, Mr. BREAUX, Mr. THOMAS, Ms. LANDRIEU, and Mr. SCHUMER):

S. 877. A bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; to the Committee on Commerce, Science, and Transportation.

By Mr. CRAIG (for himself and Mr. CRAPO):

S. 878. A bill to authorize an additional permanent judgeship in the district of Idaho, and for other purposes; to the Committee on the Judiciary.

By Mr. SMITH:

S. 879. A bill to amend the Internal Revenue Code of 1986 to increase and extend the special depreciation allowance, and for other purposes; to the Committee on Finance.

By Mr. GREGG:

S. 880. An original bill to amend the Child Care and Development Block Grant Act of 1990 to reauthorize the Act, to improve early learning opportunities and promote school preparedness, and for other purposes; from the Committee on Health, Education, Labor, and Pensions; placed on the calendar.

By Mr. BINGAMAN (for himself, Mr. COCHRAN, Mrs. LINCOLN, Mr. HATCH, Mr. JEFFORDS, Ms. LANDRIEU, and Mr. DAYTON):

S. 881. A bill to amend title XVIII of the Social Security Act to establish a minimum geographic cost-of-practice index value for physicians' services furnished under the medicare program; to the Committee on Finance.

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

S. 882. A bill to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes; to the Committee on Finance.

By Mr. BREAUX (for himself, Mr. CHAFEE, Mr. BINGAMAN, Ms. LANDRIEU, Mr. LIEBERMAN, Mrs. CLINTON, Mr. MILLER, and Mr. GRAHAM of Florida):

S. 883. A bill to amend title XIX of the Social Security Act to revise and simplify the transitional medical assistance (TMA) program; to the Committee on Finance.

By Ms. LANDRIEU (for herself, Mr. NELSON of Nebraska, Mr. SHELBY, Mrs. LINCOLN, Mrs. HUTCHISON, Mr. JOHNSON, Mr. BUNNING, and Mr. REID):

S. 884. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 885. A bill entitled ''Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003''; to the Committee on the Judiciary.

By Mr. MCCAIN (for himself, Mr. HOLLINGS, Ms. SNOWE, and Mr. KERRY):

S. 886. A bill to ratify otherwise legal appointments and promotions in the commissioned corps of the National Oceanic and Atmospheric Administration that failed to be submitted to the Senate for its advice and consent as required by law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

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

S. 887. A bill to amend the Internal Revenue Code of 1986 to apply an excise tax to excessive attorneys fees for legal judgments, settlements, or agreements that operate as a tax; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. KENNEDY:

S. Res. 117. An original resolution recognizing the 100th anniversary of the founding of the Laborers' International Union of North America, and congratulating members and officers of the Laborers' International Union of North America for the union's many achievements; from the Committee on the Judiciary; placed on the calendar.

By Mrs. BOXER:

S. Res. 118. A resolution supporting the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the events surrounding the restriction, exclusion, and internment of individuals and families during World War II; to the Committee on the Judiciary.

By Ms. COLLINS (for herself, Mr. BAUCUS, Mr. BINGAMAN, Mr. DOMENICI, and Mrs. CLINTON):

S. Res. 119. A resolution expressing the sense of the Senate that there should be parity among the countries that are parties to the North American Free Trade Agreement with respect to the personal exemption allowance for merchandise purchased abroad by returning residents, and for other purposes; to the Committee on Finance.

By Mr. JEFFORDS:

S. Res. 120. A resolution commemorating the 25th anniversary of Vietnam Veterans of America; to the Committee on the Judiciary.

By Mr. SUNUNU (for himself, Mr. GREGG, Ms. SNOWE, and Ms. COLLINS):

S. Con. Res. 35. A concurrent resolution honoring the 129 sailors and civilians lost aboard the U.S.S. Thresher on April 10, 1963, and urging the Secretary of the Army to erect a memorial to this tragedy in Arlington National Cemetery; to the Committee on Veterans' Affairs.

ADDITIONAL COSPONSORS

S. 55

At the request of Mr. JOHNSON, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 55, a bill to amend title 38, United States Code, to modify the annual determination of the rate of the basic benefit of active duty educational assistance under the Montgomery GI Bill, and for other purposes.

S. 245

At the request of Mr. BROWNBACK, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 245, a bill to amend the Public Health Service Act to prohibit human cloning.

S. 363

At the request of Ms. MIKULSKI, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 363, a bill to amend title II of the Social Security Act to provide that the reductions in Social Security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 392

At the request of Mr. REID, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 436

At the request of Mr. LEAHY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 436, a bill to amend the Foreign Intelligence Surveillance Act of 1978 to improve the administration and oversight of foreign intelligence surveillance, and for other purposes.

S. 504

At the request of Mr. ALEXANDER, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 504, a bill to establish academics for teachers and students of American history and civics and a national alliance of teachers of American history and civics, and for other purposes.

S. 583

At the request of Mrs. HUTCHISON, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 583, a bill to require the provision of information to parents and adults concerning bacterial meningitis and the availability of a vaccination with respect to such disease.

S. 605

At the request of Mr. SMITH, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 605, a bill to extend waivers under the temporary assistance to needy families program through the end of fiscal year 2008.

S. 623

At the request of Mr. WARNER, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 623, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 631

At the request of Mr. SANTORUM, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 631, a bill to amend title 39, United States Code, with respect to cooperative mailings.

S. 703

At the request of Mr. HAGEL, the names of the Senator from Utah (Mr. HATCH), the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 703, a bill to designate the regional headquarters building for the National Park Service under construction in Omaha, Nebraska, as the ''Carl T. Curtis National Park Service Midwest Regional Headquarters Building''.

S. 740

At the request of Mr. LIEBERMAN, the names of the Senator from Florida (Mr.

GRAHAM), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 740, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. 741

At the request of Mr. SESSIONS, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 741, a bill to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

S. 757

At the request of Mr. CHAMBLISS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 757, a bill entitled the ''Guard and Reserve Commanders Pay Equity Act''.

S. 760

At the request of Mr. GRASSLEY, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Louisiana (Ms. LANDRIEU), the Senator from South Dakota (Mr. DASCHLE) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 760, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 783

At the request of Mr. CHAMBLISS, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 783, a bill to expedite the granting of posthumous citizenship to members of the United States Armed Forces.

S. 816

At the request of Mr. CONRAD, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 816, a bill to amend title XVIII of the Social Security Act to protect and preserve access of medicare beneficiaries to health care provided by hospitals in rural areas, and for other purposes.

S. 822

At the request of Mr. KERRY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 822, a bill to create a 3-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans.

S. 832

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 832, a bill to provide that bonuses and other extraordinary or excessive compensation of corporate insiders and wrongdoers may be included in the bankruptcy estate.

S. 837

At the request of Mr. BROWNBACK, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 837, a bill to establish a commission to conduct a comprehensive review of Federal agencies and programs and to recommend the elimination or realignment of duplicative, wasteful, or outdated functions, and for other purposes.

S. 845

At the request of Mr. GRAHAM of Florida, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 845, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S.J. RES. 1

At the request of Mr. KYL, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

S.J. RES. 8

At the request of Mr. BIDEN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S.J. Res. 8, a joint resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of sexual assault in the United States and supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month.

S.J. RES. 8

At the request of Mr. BROWNBACK, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S.J. Res. 8, supra.

S. RES. 75

At the request of Mr. CAMPBELL, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. Res. 75, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

S. RES. 82

At the request of Mr. BROWNBACK, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Res. 82, a resolution expressing the sense of the Senate concerning the continuos repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women.

S. RES. 111

At the request of Mr. HATCH, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Texas (Mrs. HUTCHISON), the Senator from Colorado (Mr. ALLARD) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. Res. 111, a resolution designating April 30, 2003, as ''Dia de los Ninos: Celebrating Young Americans'', and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENSIGN (for himself, Mr. BROWNBACK, Mr. INHOFE, Mr. TALENT, Mr. SANTORUM, Mr. GRASSLEY, Mr. ENZI, Mr. SESSIONS, Mr. ALLEN, Mr. BUNNING, Mr. FITZGERALD, Mr. CHAMBLISS, Mr. DEWINE, Mr. MCCONNELL, Mr. COLEMAN, Mr. KYL, Mr. NICKLES, Mr. GRAHAM of South Carolina, Mr. BOND, Mr. HAGEL, Mr. CRAIG, Mr. MCCAIN, and Mr. HATCH):

S. 851. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

Mr. ENSIGN. Mr. President, I rise to introduce the Child Custody Protection Act. This legislation makes it a Federal offense to knowingly transport a minor across a State line, with the intent that she obtain an abortion, in circumvention of a State's parental consent or parental notification law.

I have three young children in school, including a daughter, so I know something about parental consent. My wife and I, like most parents, have to give our written consent for school activities all the time.

In most schools, an underage child can't go on a school field trip without a signed permission slip. An underage child also can't receive mild medication at school, such as aspirin, for the alleviation of pain or discomfort unless a parent signs a release form permitting the school nurse to administer it. In some schools, a child may not take sex education class without parental consent. Nothing, however, prevents this same child from being taken across State lines, in direct disobedience of State laws, for the purpose of undergoing a life-altering abortion.

The Child Custody Protection Act simply attempts to strengthen the effectiveness of State laws designed to protect children from the health and safety risks associated with abortion. In many cases, only a girl's parents know of her prior psychological and medical history, including allergies to medication and anesthesia. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or the release of pertinent data from family physicians. When a pregnant girl is taken to have an abortion without her parents' knowledge, none of these precautions can be taken. The harsh reality is that leaving parents uniformed about their underage daughter's abortion may not only be detrimental to the physical and mental health of the child but may, in some instances, be fatal.

This legislation does not supercede, override, or in any way alter existing State parental involvement laws. It does not impose any parental notice or consent requirement on any State. The Child Custody Protection Act addresses the interstate transportation of minors in order to circumvent valid, existing state laws and uses the authority of Congress to regulate interstate activity to protect those laws from evasion.

Currently, forty-three States have laws requiring a minor to get the consent of or notify one or both parents prior to an abortion, but only thirty-three are enforcing those measures. Most of the statutes apply to a child under the age of 18 and provide for a court bypass procedure should she be unable to involve her parents.

This legislation is a common sense solution to a dire problem. A minor who is forbidden to drink alcohol, to stay out past a certain hour, or to drive a car in some states is certainly not prepared to make a life-altering, hazardous decision, such as an abortion, without the consultation or consent of at least one parent.

In fact, a poll found that 85 percent of voters, including 75 percent of ''pro-choice'' voters, said ''No'' when asked, ''Should a person be able to take a minor girl across State lines to obtain an abortion without her parents' knowledge?''

I would like to thank the original cosponsors of this bill for their support, Senators BROWNBACK, INHOFE, TALENT, SANTORUM, GRASSLEY, ENZI, SESSIONS, ALLEN, BUNNING, FITZGERALD, CHAMBLISS, DEWINE, MCCONNELL, COLEMAN, KYL, NICKLES, LINDSEY GRAHAM, BOND, HAGEL, CRAIG, MCCAIN and HATCH. I look forward to working with them, and other members of the Senate, to ensure that underage girls are protected from unscrupulous individuals who want them to make a life-altering decision without parental involvement.

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. 851

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Custody Protection Act''.

SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 117 the following:

''CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION

''Sec.
''2431. Transportation of minors in circumvention of certain laws relating to abortion.

''§ 2431. Transportation of minors in circumvention of certain laws relating to abortion

''(a) OFFENSE.—

''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

''(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed on the minor, in a State other than the State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides.

''(b) EXCEPTIONS.—

''(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

''(2) A minor transported in violation of this section, and any parent of that minor, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

''(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant reasonably believed, based on information the defendant obtained directly from a parent of the minor or other compelling facts, that before the minor obtained the abortion, the parental consent or notification, or judicial authorization took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides.

''(d) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

''(e) DEFINITIONS.—For the purposes of this section—

''(1) a 'law requiring parental involvement in a minor's abortion decision' means a law—

''(A) requiring, before an abortion is performed on a minor, either—

''(i) the notification to, or consent of, a parent of that minor; or

''(ii) proceedings in a State court; and

''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

''(2) the term 'parent' means—

''(A) a parent or guardian;

''(B) a legal custodian; or

''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides,

who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required;

''(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision; and

''(4) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new item:

''117A. Transportation of minors in circumvention of certain laws relating to abortion ..... 2431''.

Mr. HATCH. Mr. President, I rise today to join with my colleagues in introducing the Child Custody Protection Act and express my strong support for this important piece of legislation. Similar legislation was previously introduced in past sessions of Congress but, and I am sad to say, never was signed into law. However, I hope that today is the beginning of a new day to help protect the health and safety of children while safeguarding the rights and responsibilities of parents.

This bill is a reasonable effort to build upon two basic points with which many agree—despite other long-standing differences. The first is the desirability of parental involvement in a minor's abortion decision, and the other is the need to protect a pregnant minor's physical health.

This bill does not supersede, override, or in any way alter existing State parental consent or notification laws. Nor does this bill require States to implement their own parental involvement laws. The Child Custody Protection Act simply makes it a Federal offense to knowingly transport a female minor across a state line, with the intent that she obtain an abortion, in circumvention of State laws requiring parental consent or notification.

This bill, I would emphasize, is not a Federal parental involvement law; it merely ensures that State laws are not evaded through interstate activity. The Federal Government is not trying to tell the States how they must act and when, and this bill is not forcing parents to be good parents. This legislation strengthens the effectiveness of State laws, which is where the issue is best addressed and enforced. If we fail to pass this bill, we would be choosing to ignore the legitimacy and constitutionality of States to create and pass laws that specifically address the needs and desires of its citizens, especially when it comes to the health and safety of children.

The Child Custody Protection Act is a reasonable and rational approach to fixing a serious problem. In most places, a school nurse cannot provide an aspirin to a student for a headache without permission from the parent. Students cannot go on field trips without parental approval. Some report cards need a parent's signature to verify the parent knows how their child is performing academically.

This bill is not addressing something relatively trivial; it is drawing attention to a very serious medical procedure and protecting the health and safety of young girls. States that choose to implement parental notification laws because of their concerns with the well-being and safety of children should have every tool necessary to enforce their own laws.

An abortion is a risky medical procedure, especially for young teenagers. This bill is designed to protect children from the health and safety risks associated with abortion. In many cases, only a young girl's parents know of her prior psychological and medical history, including allergies to medication and anesthesia. Many other medical procedures in this country require the

consent of parents before they are performed. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or even release important information from family physicians. Given all of these other important medical situations that require parental consent, it is only reasonable and logical to recognize and enforce a States law asking for parental consent or notification for certain abortions.

We all know how contentious the issue of abortion can get around here, and across the country. But this matter is not really even about abortion. This bill is simply about protecting the health and safety of minor children and the rights that their own States have concluded their parents should have.

I would urge all of my colleagues to support this legislation and prevent circumvention of State laws, especially when the health and safety of children is involved.

By Mr. DEWINE (for himself, Mr. DASCHLE, Mr. SMITH, and Mr. LEAHY):

S. 852. A bill to amend title 10, United States Code, to provide limited TRICARE program eligibility for members of the Ready Reserve of the Armed Forces, to provide financial support for continuation of health insurance for mobilized members of reserve components of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. DASCHLE. Mr. President, today I join with a bipartisan group of colleagues from the Senate Guard Caucus to introduce the National Guard and Reserve Comprehensive Health Benefits Act of 2003. This bill will allow reservists and their families to receive health coverage through Tricare by paying a modest premium.

These dedicated men and women deserve a better benefit package, given the dramatic expansion of their role within our military. Indeed, there is concern that the high rate of mobilizations—which no one expects to abate—will erode this force's ability to recruit and retain top-notch personnel. South Dakota Guard leaders tell me this bill would be perhaps the most powerful tool we could give them for recruiting and retention. By providing access to quality affordable health care for reservists and their families, this bill will also ensure that when they are mobilized, they are healthy and ready to go.

As I stand before you today, nearly 2,000 members of South Dakota's Guard and Reserves are deployed throughout the world—from force-protection missions at home to assignments in Europe and the Persian Gulf. Most of these reservists will be mobilized for 6 months, and some will stay activated for up to 2 years. And while South Dakota has one of the highest per-capita mobilization rates in the country, it is not unique. As the U.S. role as an international leader evolves, the National Guard and Reserves are being called upon at unprecedented rates to bolster our Nation's defense.

Indeed, since the 1991 gulf war, and particularly since the terrorists attacks of September 11, the demands on Reserve and Guard units have increased steadily. Not only are more reservists deployed more often, they are also activated for increasingly diverse tasks. Historically, this force has helped address a wide variety of social needs—from enforcing civil rights laws to fighting forest fires—and homeland defense is shaping us a major new duty that will require its sustained engagement.

While the demands we place on reservists have grown markedly in the last decade, the Federal Government's commitment to this dedicated group of men and women has not kept pace. In fact, the basic pay and benefit structure that was established during the cold war—when reservists could see their entire career pass by without being activated—remains in place today. As a result, leaders of the National Guard and Reserves are increasingly worried about their ability to recruit and retain new members.

The legislation we are introducing today takes a major step toward providing the men and women of our Reserve components with the support they need to carry out their new, vital role in the total force structure. It will offer Reserve and National Guard members the opportunity to participate for themselves and their family members in the same Tricare program available to active-duty service members and their families. Reservists and their families will share the cost of premium payments with the Department of Defense, with the same cost distribution as used in the Federal Employees Health Benefit Plan. This program will help the National Guard and Reserves attract and keep the best and brightest men and women in the Nation.

The National Guard Association of the United States reports that the average cost of a family health care plan through a civilian HMO is $7,541 per year. In contrast, it estimates that the Tricare cost per family is only $5,173 per year, even without the Government sharing any of the cost. With Government cost-sharing, this will be an attractively priced option for securing health coverage.

Beyond recruitment and retention, this program will improve readiness. More than 20 percent of the Ready Reserve—and as much as 40 percent of young enlisted personnel—do not currently have health insurance. Providing access to quality health care during all phases of service can drastically reduce the occurrence of situations in which large portions of a unit are unable to deploy because of medical reasons. Maintaining a healthy force is absolutely essential to maintaining a prepared force.

Our legislation will also reduce the incidence of problems that invariably occur during mobilization, when families leave their private-sector health plan and enter a wholly new plan, Tricare. Last month, I worked with Secretary of Defense Donald Rumsfeld to end a nationwide problem among families of mobilized reservists. Simply put, they were being forced, unfairly and improperly, to join a more expensive Tricare plan. We did solve that problem, but many families had to wait weeks without knowing whether they should try to extend their private coverage or whether they could afford Tricare. That is simply unacceptable. It is the last thing a reservist should have to worry about when preparing, possibly, for deployment to a war zone.

Another challenge for families going through mobilization is learning the Tricare benefit structure and understanding its system for helping those with problems or questions. Again, all this would be eliminated if families could enroll in Tricare before mobilization. If a family believes its employer's civilian plan is superior, they would be free to remain, and, during periods of mobilization, those premiums would be partially subsidized.

We have developed this bill in consultation with leaders of the National Guard and Reserves at the State and National levels. I appreciate their concern for this problem and their work to help develop a solution. In this regard, I would particularly like to acknowledge the efforts and strong support of the South Dakota National Guard, as well as the Military Officers Association of America, the Enlisted Association of the National Guard, the National Guard Association of the United States, the Reserve Officers Association, the Marine Corps Reserve Officers Association, the National Military Family Association, the National Association for Uniformed Services, and the National Military/Veterans Association.

I would like also to thank my cosponsors, Senator LEAHY, Senator DEWINE, and Senator GORDON SMITH, for helping advance this project.

Guaranteeing that all reservists have access to health care—either through civilian employers or Tricare—will ensure that this force is ready to fight at a moment's notice. The bill we are introducing today will not only improve the readiness of the current Reserve Force, but will pay dividends in the future by improving our ability to recruit and retain the best and brightest men and women for the National Guard and Reserves.

The Senate has set aside time each day for the last 3 weeks to honor and support the dedicated service of our troops in Iraq. Surely we can agree that one of our high priorities should be to ensure that, as long as they continue their service to our country, they will always have access to high-quality affordable health care.

Mr. LEAHY. Mr. President, today I am joined by Senator DEWINE, by our minority leader, Senator DASCHLE, and

by Senator SMITH in introducing legislation that will boost the readiness of our Nation's military Reserve.

Never has our Nation relied more heavily on the Selected Reserve—more than 875,000 men and women, who stand ready for deployments at home or abroad, at a moment's notice. More than 54 percent of the U.S. Army's and 34 percent of the U.S. Air Force's end strength resides in the Selected Reserve. Both the Army and the Marine Corps rely on these Reserve forces for almost 20 percent of their manpower strength. The skill, experience and professionalism of these dedicated citizens often meet and exceed those of their brave counterparts in the active force.

It is no wonder that more than 200,000 reservists have been called to duty for service that is related to the war in Iraq. Many States have thousands of their citizens who have temporarily dropped their civilian jobs and left their families for deployments halfway across the globe. More than 300 citizen-soldiers, sailors, airmen, and marines in my home State of Vermont are serving proudly at the moment, here and abroad. When you include the call-ups since the September 11 attacks, the number of activated reservists across the country far exceeds those in the first gulf war.

These deployments have spotlighted some specific and solvable problems that have affected the readiness of the reserves and, in turn, our entire military. Some of the troops who have been called up have not been as healthy as possible. Others have faced the stress of leaving their families behind while looking back in concern as their families try to navigate the sometimes arcane military health care system. While often experiencing a loss of income, reserve family members also have had to leave their civilian doctors and join the military's TRICARE program.

More troubling, many of the members of the Guard and Reserve who might be activated any day do not currently have access to affordable health insurance. A recent General Accounting Office report underscores the fact that most of these uninsured Guard and Reservists reside in the lower enlisted ranks, where the reserve soldiers, sailors, airmen, and marines oftentimes are unemployed or switch jobs frequently. It is unfair to them and their families, and it is unwise for the preparedness of our military, to expect someone to deploy anywhere at the drop of a hat, but then to disregard whether they will be as healthy as possible when we need to call them to active duty.

These men and women are ready to make the ultimate sacrifice for their country, and so are their families. But they are performing as full-time soldiers with part-time benefits.

This situation is preventing the National Guard and the Reserve from being as ready as possible for action. At the same time, the stress and strain that activations place on families has hurt recruiting and retention. To ensure the strongest and most effective reserve and the strongest and most effective military capability, it is critical that we address these issues and provide comprehensive health insurance coverage.

The National Guard and Reserve Comprehensive Health Benefits Act of 2003 will provide seamless health coverage to our reserve forces at all phases of their service. Under our plan, if one of 876,000 members of the Selected is in a drill status, that reservist and his or her family will become eligible to join the TRICARE military health insurance program. The reservist will pay an annual premium, around 30 percent of the annual cost of providing care. For a single reservist, the premium would be about $420 per year, while for a family the annual payment would be about $1,450. This is not rock-bottom-cheap health care, but our aim is to ensure affordable health insurance for hard-working families that may not otherwise have access to coverage.

If a reservist is activated, he or she will continue to have free health care through the military health system. But under our legislation, the reservist's family will be able to avoid the considerable difficulties of switching doctors and health insurance. They also can apply to have their civilian health insurance reimbursed. The program will not cost any more to the Federal Government than the current arrangement because the per capita costs are capped to ensure that they are no more than the cost of TRICARE. And when a reservist comes off active duty, he or she will be able to enter the new premium-based TRICARE program, just as before deployment.

Because reservists will be able to have access to affordable insurance whatever their deployment status, this legislation is being supported by several leading organizations, including the National Guard Association of the United States, NGAUS, the Enlisted National Guard Association of the United States, EANGUS, the Reserve Officers Association, ROA, the Naval Reserve Association, NRA, the National Military Family Association, NMFA, Marine Corps Reserve Officers Association, the National Association for Uniformed Services, the National Military/Veterans Association, and the Military Officers Association, MOA. This legislation is the top priority of The Military Coalition's Guard/Reserve Committee.

We have worked hard to fully understand the existing problems and to construct this efficient and effective solution. I would particularly like to thank former Undersecretary of Defense Fred Pang and former House Armed Services Committee Professional Staff Member Karen Heath for their sage counsel and guidance in developing this legislation. We are part of a strong, bipartisan coalition that will push for enactment of this long-overdue legislation. In the coming weeks we plan to welcome additional cosponsors for this comprehensive bill as we begin the process of moving it without delay through the legislative process and to the President's desk.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 853. A bill to amend title XVIII of the Social Security Act to eliminate discriminatory copayment rates for outpatient psychiatric services under the medicare program; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicare Mental Health Copayment Equity Act with my colleague on the Finance Committee, Senator JOHN KERRY.

In brief, my bill would a correct a serious disparity in payment for treatment of mental disorders under Medicare law. Medicare beneficiaries typically pay 20 percent copayment for outpatient services, including doctor's visits and Medicare pays the remaining 80 percent. But for treatment of mental disorders, Medicare law requires patients pay a 50-percent copayment. Under my bill, this copayment will be reduced over a six year period, starting in 2004, from the current 50 percent to 20 percent. This means that in 2010, patients seeking outpatient treatment for mental illness will pay the same 20 percent copayment required of Medicare patients that receive treatment for any other illness.

Let's look at this issue in another way. If a Medicare patient has an office visit for treatment for cancer or heart disease, the patient is responsible for 20 percent of the doctor's fee. But if a Medicare patient has an office visit with a psychiatrist, psychologist, social worker, or other professional for treatment for depression, schizophrenia, or any other condition diagnosed as a mental illness, the copayment for the outpatient visit for treatment of the mental illness is 50 percent. What sense does this make?

Indeed, my bill has a larger purpose, to help end an outdated distinction between physical and mental disorders, and ensure that Medicare beneficiaries have equal access to treatment for all health conditions. Perhaps this disparity would matter less if mental disorders were not so prevalent. But the Surgeon General has told us otherwise.

The importance of access to treatment for mental disorders is emphasized in a landmark report on mental health released by the Surgeon General in 1999. The Surgeon General reported mental illness was second only to cardiovascular diseases in years of healthy life lost to either premature death or disability. And the occurrence of mental illness among older adults is widespread with a substantial proportion of the population 55 and older—almost 20 percent of this age group—experiencing specific mental disorders that are not part of ''normal'' aging.

Further, older Americans have the highest rate of suicide in the country,

and the risk of suicide increases with age. In fact, in the State of Maine, the suicide rate for seniors is three times as high as the rate for adolescents. Untreated depression among the elderly substantially increases the risk of death by suicide.

There is another sad irony. While Medicare often is viewed as health insurance for people over age 65, Medicare also provides health insurance coverage for people with severe disabilities. The single most frequent cause of disability for Social Security and Medicare benefits is mental disorders—affecting almost 1.4 million of 6 million Americans who receive Social Security disability benefits. Yet, at the same time, Medicare pays less for critical mental health services needed by these beneficiaries than if they had a nonmental disability.

But there also is very good news that there are increasingly effective treatments for mental illnesses. With proper treatment, the majority of people with a mental illness can lead productive lives. By removing financial barriers that inhibit access to treatment services, we will be able to eliminate stigmas and overcome a lack of understanding of mental disorders.

I urge my colleagues to join with me to bring Medicare payment policy for mental disorders into the 21st century.

Mr. KERRY. Mr. President, I am pleased to join my colleague Senator SNOWE in introducing the Medicare Mental Health Copayment Equity Act. This legislation will establish mental health care parity in the Medicare program.

Medicare currently requires patients to pay a 20 percent co-payment for all Part B services except mental health care services, for which patients are assessed a 50 percent co-payment. Thus, under the current system, if a Medicare patient sees an endocrinologist for diabetes treatment, an oncologist for cancer treatment, a cardiologist for heart disease treatment or an internist for treatment of the flu, the co-payment is 20 percent of the cost of the visit. If, however, a Medicare patient visits a psychiatrist for treatment of mental illness, the co-payment is 50 percent of the cost of the visit. This disparity in outpatient co-payments represents blatant discrimination against Medicare beneficiaries with mental illness.

The prevalence of mental illness in older adults is considerable. According to the U.S. Surgeon General, 20 percent of older adults in the community and 40 percent of older adults in primary care settings experience symptoms of depression, while as many as one out of every two residents in nursing homes are at risk of depression. The elderly have the highest rate of suicide in the United States, and there is a clear correlation between major depression and suicide: 60 to 70 percent of suicides among patients 75 and older have diagnosable depression. In addition to our seniors, 400,000 non-elderly disabled Medicare beneficiaries become Medicare-eligible by virtue of severe and persistent mental disorders. To subject the mentally disabled to discriminatory costs in coverage for the very conditions for which they became Medicare eligible is illogical and unfair.

There is ample evidence that mental illness can be treated. Unfortunately, those in need of treatment often do not seek it because they are ashamed of their condition. Among our Medicare population, the mentally ill face a double burden: not only must they overcome the stigma about their illness, but once they seek treatment they must pay one-half of the cost of care out of their own pocket. The Medicare Mental Health Copayment Equity Act will phase-down the 50 percent co-payment for mental health care services to 20 percent over six years. By applying the same co-payment rate to mental health services to which all other outpatient services are subjected, the Medicare Mental Health Copayment Equity Act will bring parity to the Medicare program and improve access to care for our senior and disabled beneficiaries who are living with mental illness. I urge my colleagues to join with us to pass this critical legislation.

I ask unanimous consent that several letters of support be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MAINE OSTEOPATHIC ASSOCIATION,
Manchester, ME, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the osteopathic physicians (D.O.'s) in Maine, I want to applaud your leadership efforts in sponsoring the Medicare Mental Health Copayment Equity Act of 2003. This bill would end Medicare's unfortunate discrimination against patients with mental illness.

We support this legislation that would end this discrimination because it requires that Medicare patients pay only the same 20 percent co-payment for mental illness treatment that they pay when seeking other medical treatment, such as treatment for diabetes, asthma or influenza.

The Maine Osteopathic Association appreciates your thoughtfulness, commitment and compassion in equitably treating persons with mental illness.

Your sponsorship of this most important bill is a major step to end Medicare's discrimination coverage of mental illness treatment.

Sincerely,

DANIEL M. PIERCE, D.O.
President.

April 9, 2003.

Hon. JOHN KERRY,
U.S. Senate, Washington, DC.

DEAR SENATOR KERRY: On behalf of the American Association for Geriatric Psychiatry (AAGP), I am writing to add AAGP's endorsement to legislation which you are planning to introduce with Senator Snowe to end the discriminatory copayment required by Medicare for treatment of mental illness.

Medicare coverage of mental health services is fragmented and subject to arbitrary and discriminatory limitations. Although coinsurance for most services covered by Medicare is 20 percent, current law requires a 50 percent co-payment for mental health services furnished by psychiatrists and other health care professionals who specialize in the treatment of mental illness. This limit, which dates back to the inception of the Medicare program in 1965, is based on the outmoded assumption that all mental illness is chronic and requires unlimited therapeutic services. Advances in treatment have made this assumption highly inaccurate. Your bill would establish copayment parity between mental health benefits and other medical benefits under the Medicare program.

Your legislation stands to dramatically improve the lives of Medicare beneficiaries by providing them with the access to mental health care that they deserve.

AAGP commends you for your dedication to ensuring that all Americans have adequate access to effective mental health treatments, and we look forward to working with you to achieve the enactment of this legislation.

Sincerely,

JOEL E. STREIM, M.D.,
President.

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your House sponsorship of the Medicare Mental Health Copayment Equity Act of 2003.

As you know, Medicare Part B requires by statute that beneficiaries pay a copayment of 20 percent, except for the discriminatory 50 percent copayment charged for outpatient mental health treatment. It is time for Congress to end what amounts to cost-sharing discrimination by diagnosis. The bill you are introducing with Representative Richard Neal would ultimately require Medicare beneficiaries to pay the same 20 percent copayment amount for outpatient mental health treatment as they would otherwise pay for other Part B services. Asking our Medicare beneficiaries to pay half the cost of their mental health care out of pocket is simply unjust, and is a significant barrier to necessary treatment.

Thank you for your foresight and leadership in your lead sponsorship of the Medicare Mental Health Copayment Equity Act of 2003. Thanks are also due to the outstanding work by Catherine Finely, who ably represents you. The APA looks forward to working with you to make your bill a reality this year.

Sincerely,

PAUL S. APPELBAUM, M.D.,
President.

NAMI,
THE NATION'S VOICE ON MENTAL HEALTH,
Arlington, VA, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of NAMI's 210,000 members and 1,200 affiliates I am writing to offer our strong support for the Medicare Mental Illness Nondiscrimination Act. Thank you for bringing forward this important legislation to bring a discrimination in outpatient treatment services in the Medicare program. As the nation's largest organization representing persons with severe mental illness and their families, we are extremely grateful for your leadership on this important issue.

Perhaps the most glaring shortcoming in the Medicare program is the discriminatory

co-payment for most outpatient mental illness treatment services. As you know, outpatient psychotherapy services are covered at 50 percent under Medicare, with a 50 percent beneficiary co-payment requirement. This is stark contrast to the 80 percent payment, and 20 percent co-payment for all other outpatient services. In NAMI's view, this is a clear form of discrimination in one of the federal government's most important health care programs—providing coverage to more than 39 million Americans—both seniors and non-elderly people with severe disabilities such as serious mental illnesses. We know that treatment makes a tremendous difference in the lives of persons with mental illness. Your legislation removes a significant financial barrier to such necessary care for the Medicare population.

Thank you for once again leading the way in the Congress in bringing an end to discrimination against persons living with severe mental illness.

Sincerely,

RICHARD C. BIRKEL,
Executive Director.

AMERICAN ASSOCIATION FOR GERIATRIC PSYCHIATRY,
Bethesda, MD, April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the American Association for Geriatric Psychiatry (AAGP), I writing to add AAGP's endorsement to legislation which you are planning to introduce with Senator Kerry to end the discriminatory copayment required by Medicare for treatment of mental illness.

Medicare coverage of mental health services is fragmented and subject to arbitrary and discriminatory limitations. Although coinsurance for most services by Medicare is 20 percent, current law requires a 50 percent co-payment for mental health services furnished by psychiatrists and other health care professionals who specialize in the treatment of mental illness. This limit, which dates back to the inception of the Medicare program in 1965, is based on the outmoded assumption that all mental illness is chronic and requires unlimited therapeutic services. Advances in treatment have made this assumption highly inaccurate. Your bill would establish copayment parity between mental health benefits and other medical benefits under the Medicare program.

Your legislation stands to dramatically improve the lives of Medicare beneficiaries by providing them with the access to mental health care that they deserve.

AAGP commends you for your dedication to ensuring that all Americans have adequate access to effective mental health treatments, and we look forward to working with you to achieve the enactment of this legislation.

Sincerely,

JOEL E. STREIM, M.D.,
President.

MAINE PSYCHIATRIC ASSOCIATION,
Manchester, ME, March 19, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE, on behalf of the psychiatric physicians of the Maine Psychiatric Society, I want to offer you my sincere appreciation for your leadership in sponsoring the Medicare Mental Health Copayment Equity Act of 2003, working to end Medicare's historic discrimination against patients with mental illness.

Your legislation would end this discrimination by requiring that discriminatory copayments required of Medicare patients for mental illness treatment would eventually be reduced from the current 50 percent level to the 20 percent level patients pay for other medical treatment, such as treatment for diabetes, heart disease, or the flu. This legislation promotes parity for mental health benefits and improves access to mental health care for all Medicare beneficiaries in Maine and across the country.

The Maine Psychiatric Association appreciates your ongoing commitment to persons with mental illness, and your sponsorship of this most important bill to end Medicare's discriminatory coverage of mental illness treatment.

Sincerely,

EDWARD PONTIUS, M.D.,
Chair, Legislative Affairs Committee, Maine Psychiatric Association.

MAINE MEDICAL ASSOCIATION,
April 9, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: I am writing to you on behalf of the Maine Medical Association and the Maine Psychiatric Association, representing over 2500 Maine-licensed physicians, to thank you sincerely for assuming the leadership in sponsoring the Medicare Mental Health Co-payment Equity Act of 2003, that would end Medicare's historic discrimination against patients with mental illness.

As you know, mental health illness and treatment are very often complicated by concurrent major physical illnesses, like cancer, heart disease, and diabetes. Unfortunately, co-payment for treatment of mental illnesses are two and a half times higher than that for physical illnesses. Your legislation would end this discrimination by requiring that Medicare patients pay only the same 20 percent co-payment for mental illness treatment that they would pay when seeking other medical treatment.

The Maine Medical Association and the Maine Psychiatric Association appreciate your ongoing commitment to persons with mental illness and your sponsorship of this most important bill to end Medicare's discriminatory coverage of mental illness treatment.

Sincerely,

KRISHNA BHATTA, M.D.,
President.

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, April 9, 2003.

Hon. JOHN KERRY,
U.S. Senate, Washington, DC.

DEAR SENATOR KERRY: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your House sponsorship of the Medicare Mental Health Copayment Equity Act of 2003.

As you know, Medicare Part B requires by statute that beneficiaries pay a copayment of 20 percent, except for the discriminatory 50 percent copayment charged for outpatient mental health treatment. It is time for Congress to end what amounts to cost-sharing discrimination by diagnosis. The bill you are introducing with Representative Richard Neal would ultimately require Medicare beneficiaries to pay the same 20 percent copayment amount for outpatient mental health treatment as they would otherwise pay for other Part B services. Asking our Medicare beneficiaries to pay half the cost of their mental health care out of pocket is simply unjust, and is a significant barrier to necessary treatment.

Thank you for your foresight and leadership in your lead sponsorship of the Medicare Mental Health Copayment Equity Act of 2003. Thanks are also due to the outstanding work by Kelly Bovio, who ably represented you. The APA looks forward to working with you to make your bill a reality this year.

Sincerely,

PAUL S. APPLEBAUM, M.D.,
President.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 854. A bill to authorize a comprehensive program of support for victims of torture, and for other purposes; to the Committee on Foreign Relations.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the bill I introduce today to authorize a comprehensive program of support for victims of torture be printed in the RECORD.

There being on objection, the bill was ordered to be printed in the RECORD, as follows:

S. 854

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 ''Torture Victims Relief Reauthorization Act of 2003''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 4(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) there are authorized to be appropriated to the President to carry out section 130 of such Act $11,000,000 for fiscal year 2004, $12,000,000 for fiscal year 2005, and $13,000,000 for fiscal year 2006.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CONTRIBUTION TO THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE.

Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2221 et seq.), there are authorized to be appropriated to the President for a voluntary contribution to the United Nations Voluntary Fund for Victims of Torture $6,000,000 for fiscal year 2004, $7,000,000 for fiscal year 2005, and $8,000,000 for fiscal year 2006.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR DOMESTIC TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 5(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for the Department of Health and Human Services for fiscal years 2004, 2005, and 2006, there are authorized to be appropriated to carry out subsection (a) $20,000,000 for fiscal year 2004, $25,000,000 for fiscal year 2005, and $30,000,000 for fiscal year 2006.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

By Ms. SNOWE (for herself, Mr. BOND, and Mr. GRASSLEY):

S. 855. A bill to amend the Internal Revenue Code of 1986 to modify the unrelated business income limitation on investment in certain debt-financed properties; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Small Business Investment Company Capital Access Act of 2003 whose purpose is to increase the amount of venture capital available to small businesses. As the chair of the Committee on Small Business and Entrepreneurship, I am pleased that my good friend and former chairman of the Committee, Senator BOND, and the chairman of the Senate Finance Committee, Senator GRASSLEY, have agreed to be the principal cosponsors of this important bill.

During the past 2 years, there has been a significant contraction of the private equity market. During this same period, the Small Business Administration's Small Business Investment Company program has taken on a significant role in providing venture capital to small businesses seeking investments in the range of $500,000 to $3 million.

Small Business Investment Companies are government-licensed, government-regulated, privately managed venture capital firms created to invest only in original issue debt or equity securities of U.S. small businesses that meet size standards set by law. In the current economic environment, the SBIC program represents an increasingly important source of capital for small enterprises.

While debenture SBICs qualify for SBA-guaranteed borrowed capital, the Government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because they would be subject to tax liability for unrelated business taxable income. More often than not, tax-exempt investors opt to invest in venture capital funds that do not create UBTI. As a result an estimated 60 percent of the private capital potentially available to these SBICs is effectively off limits.

The Small Business Investment Company Capital Access Act of 2003 would correct this problem by excluding government-guaranteed capital of debenture SBICs from debt for purposes of the UBTI rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI recordkeeping or tax liability.

In 1958, Congress created the SBIC program to assist small business owners in obtaining investment capital. More than 40 years later, small businesses continue to experience difficulty in obtaining investment capital from banks and traditional investment sources. Although investment capital is readily available to large businesses from traditional Wall Street investment firms, small businesses seeking investments in the range of $500,000 to $3 million have to look elsewhere. SBICs are frequently the only sources of investment capital for growing small businesses.

Often we are reminded that the SBIC program has helped some of our Nation's best known companies. It has provided a financial boost at critical points in the early growth period for many companies that are familiar to all of us. For example, when Federal Express needed help from reluctant credit markets, it received a needed infusion of capital from two SBA-licensed SBICs at a critical juncture in its development stage. The SBIC program also helped other well-known companies, when they were not so well known, such as Intel, Outback Steakhouse, America Online, and Callaway Golf.

What is not well known is the extraordinary help the SBIC program provides to main street America small businesses. These are companies we know from hometowns all over the United States. Main street companies provide both stability and growth in our local business communities.

In 1991, the SBIC program was experiencing major losses, and the future of the program was in doubt. Consequently, in 1992 and 1996, the Committee on Small Business worked closely with the Small Business Administration to correct deficiencies in the law in order to ensure the future of the program.

Today, the SBIC program is expanding rapidly in an effort to meet the growing demands of small business owners for debt and equity investment capital. And it is important to focus on the significant role that is played by the SBIC program in support of growing small businesses. When Fortune Small Business compiled its list of 100 fastest growing small companies in 2000, six of the top 12 businesses on the list received SBIC financing during their critical growth year.

The Small Business Investment Company Capital Access Act of 2003 is important for one simple reason: once enacted it paves the way for more investment capital to be available for more small businesses that are seeking to grow and hire new employees. According to the National Association of Small Business Investment Companies, a conservative estimate of the effect of this bill would be to increase investments in debenture SBICs by $200 million per year from tax-exempt investors. Together with SBA-guaranteed leverage, that will mean as much as $500 million per year in new capital assets for debenture SBICs to invest in U.S. small businesses.

According to the SBA, one job is created for every $36,000 invested in a small company. At that rate, this bill could be responsible for the creation or support of as many as 16,600 jobs—within companies receiving investments directly as well as within those firms benefitting indirectly through increased sales of goods and services to the former companies. In short, this bill is a jobs creator.

And the cost? The Joint Committee on Taxation estimated in the last Congress that this bill would result in tax revenue loss of only $1 million per year for the next 10 years.

Mr. President, the cost is low and the potential for economic gain is great. Passage of the bill will make the Government's existing SBIC program more effective in providing growth capital for America's small business entrepreneurs.

And most importantly, it will provide sorely needed capital for the sector of our economy that provides a majority of the net new jobs in this country—small businesses. That is a real stimulus that would cause new investments to be made and the creation of critically needed new jobs. Our economy is primed for this kind of support, and I urge my colleagues to support this important bill.

I ask unanimous consent that the text of the bill and a summary of its provisions be printed in the RECORD.

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

''SMALL BUSINESS INVESTMENT COMPANY CAPITAL ACCESS ACT OF 2003''

DESCRIPTION OF PROVISIONS

The bill amends section 514 of the Internal Revenue Code to exclude government-guaranteed capital borrowed by Debenture Small Business Investment Companies (SBICs) from debt for purposes of the Unrelated Business Taxable Income (UBTI) rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI record keeping or tax liability.

Currently, while Debenture SBICs qualify for borrowed capital guaranteed by the Small Business Administration, the government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because they would be subject to tax lability for UBTI. Frequently, tax-exempt investors generally opt to invest in venture capital funds that do not create UBTI. As a result, an estimated 60% of the private-capital potentially available to these SBICs is effectively ''off limits.''

S. 855

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 ''Small Business Investment Company Capital Access Act of 2003''.

SEC. 2. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN DEBT-FINANCED PROPERTIES.

(a) IN GENERAL.—Section 514(c)(6) of the Internal Revenue Code of 1986 (relating to acquisition indebtedness) is amended—

(1) by striking ''include an obligation'' and inserting ''include—

''(A) an obligation'',

(2) by striking the period at the end and inserting '', or'', and

(3) by adding at the end the following:

''(B) indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—

''(i) issued by such company under section 303(a) of such Act, or

''(ii) held or guaranteed by the Small Business Administration.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to acquisitions made on or after the date of the enactment of this Act.

By Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mr. DASCHLE, and Mr. JOHNSON):

S. 856. A bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, and Mr. COCHRAN):

S. 857. 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; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing two key education initiatives designed to promote quality education across our country and respond to the compelling needs in our schools. When I meet with teachers and parents, and even business leaders in West Virginia, everyone is concerned about the condition of our school buildings and the importance of qualified committed teachers working in those classrooms.

To address these clear and compelling needs, I am introducing two education bills. The first initiative, America's Better Classroom Act of 2003, is a school construction initiative to respond to the overwhelming needs for school construction. The Department of Education reports that the average public school building is 42 years old. In 1995, GAO estimated that we needed $112 billion for school construction and renovations. A more recent survey in 2001 in the Journal of Education Finance indicates that the need is increasing, and the unmet need for school infrastructure over the next decade is over $200 billion. My State of West Virginia will need as much as $2 billion for school construction and renovations.

America's Better Classroom Act provides the financial tools to help build and renovate our schools. It will continue the Qualified Zone Academy Bonding, QZAB, Program that has helped economically disadvantaged communities. This provision would provide $2.8 billion to continue and expand the successful QZAB Program. In recent years, this program has provided $4.2 million for support school construction and renovations in disadvantaged communities. Effective programs have earned continued support.

But the truth is that many schools districts need help with school construction and renovations, which is why the America's Better Classroom Act creates a $22 billion Qualified School Bonding Program. Funding will be allocated to the states based on the Title 1 formula so it is targeted, but the states will have flexibility in allocating support among school districts.

Last summer, I toured two schools in Berkeley County, WV—Martinsburg High School and South Middle School. The high school was built in 1928, but it had been renovated. The middle school was built in 1954, and needed serious work. The cafeteria had to serve as a part-time classroom, and they used portable trailers. These schools are in our eastern panhandle which is the region of the greatest population growth, so Berkeley County predicts that it will need to build or renovate nine schools over the next 10 years. Given the current state fiscal crisis, states and communities need the America's Better Classroom Act so that we can make needed investments. Also school construction can play a positive role in helping to stimulate our economy and create needed jobs. School construction is a more reliable economic stimulus, and an important investment in our children's education. I am proud to have Senators TOM HARKIN, TOM DASCHLE, and TIM JOHNSON as cosponsors of this important initiative. Senator HARKIN has been a true leader on education issues throughout this career, including school construction and renovations.

The next initiative to improve education is a bipartisan bill, known as Incentives to Educate American Children Act, or I TEACH. I am proud to have Senators DEWINE, LANDRIEU, and COCHRAN as cosponsors.

Under No Child Left Behind, every classroom should have a qualified teacher. Studies suggest that an estimated 2 million new teachers will be needed in our classrooms over the next decade. It will be important to ensure that we recruit and retain good teachers in every classroom, including our most disadvantaged schools and our rural schools, which often have more trouble recruiting and keeping teachers.

Unfortunately, without our help, America's disadvantaged and rural schools may not be able to attract the qualified teachers required by the No Child Left Behind Act. Isolated and impoverished, competing against higher paying and well-funded school districts for scarce classroom talent, they are already facing a desperate shortage of qualified teachers. As pressure to hire increases, that shortage could become a crisis, and children already at a disadvantage in relation to their more affluent and less isolated peers will be the ones who suffer most. Principals in West Virginia already are reporting shortages of trained teachers.

To help bring dedicated and qualified teaching professionals into our schools, the I TEACH Act will provide teachers a $1000 refundable tax credit every year they practice their profession in the public schools where they are needed most. In addition to this incentive for disadvantage and rural schools, every public school teacher has the ability to earn a $1000 refundable tax credit if a teacher achieves the National Board for Professional Teaching Standards certification. Under the bill, every teacher willing to work in underserved schools will earn a tax credit. Every teacher who gets Board certification will earn a tax credit. Teachers who work in rural or poor schools and get certified will have both credits, worth $2000. Schools who desperately need help attracting teachers will get a boost. And children educated in poor and rural schools will benefit most.

One-fourth of America's children attend public schools in rural areas, and of the 250 poorest counties in the United States, 244 are rural. West Virginia has rural schools scattered throughout 36 of its 55 counties, and these schools face real challenges in recruiting and retaining teachers, as well as dealing with other issues related to their rural location. Attracting teachers to these schools is difficult in large part due to the vast gap between what rural districts are able to offer and the salaries paid by more affluent school districts—as wide as $20,000 a year, according to one study. Poor urban schools must overcome similar difficulties. It is often a challenge for these schools to attract and keep qualified teachers. Yet, according to the 2001 No Child Left Behind Act, every school must have qualified teachers by the end of the 2005–2006 school year.

In my State of West Virginia, as in over 30 other States, there is already a state fiscal incentive for teachers who earn National Board certification. My legislation builds upon the West Virginia program; together, they add up to a powerful tax incentive for teachers to remain in the classroom and to use their skills where they are most needed.

Education should be among our top national priorities, essential for every family with a child and vital for our economic and national security. I supported the bold goals and higher standards of the 2001 No Child Left Behind Act, but they won't be met unless we invest in quality schools and good teachers. I am committed to working closely with my Senate colleagues this fall to secure as much funding as possible for our children's education.

By Mr. CORZINE (for himself, Ms. SNOWE, Ms. CANTWELL, Mr. SMITH, Mr. DODD, Mr. LEAHY, Mrs. MURRAY, Mr. DURBIN, Mr. LAUTENBERG, and Mr. BINGAMAN):

S. 859. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce legislation, the

Microbicides Development Act of 2003. I am very pleased to be introducing this bipartisan bill along with my colleagues, Senators SNOWE, CANTWELL, GORDON SMITH, DODD, LEAHY, MURRAY, DURBIN, and LAUTENBERG. I thank my colleagues for their support of this important legislation, which we believe is vital to the pursuit of combating the global HIV/AIDS crisis.

As you know, recently released UN reports paint the most horrendous picture yet of the HIV epidemic, with AIDS continuing to kill more people worldwide than any other infectious disease, and sparing no corner of the world. According to the UN, China could have more than 10 million HIV-infected people by 2010. Infection rates in Russia and Eastern Europe are rising faster than anywhere else. India may soon have the largest number of people living with HIV/AIDS in the world. And Sub-Saharan Africa remains devastated by an epidemic that has lowered life expectancy from 62 years on average to just 47. In hard-hit countries like Botswana, where 45 percent of women attending prenatal clinics are HIV-positive, a 15-year old youth has an 80 percent chance of dying of AIDS.

The UN reports come on the heels of CIA assessments that the AIDS pandemic is entering a ''stage of substantial increases in size and scope.''

Despite alarm bells ringing from the organizations as diverse in mandate as the UN and the CIA, little attention is paid to the reality that the face of the HIV epidemic both at home and abroad is increasingly female. As of the end of 2002, according to the Joint United Nations/World Health Organization Programme on HIV/AIDS, half of the world's HIV/AIDS-infected people were women. In Sub-Saharan Africa, 58 percent of all adult HIV/AIDS cases were found in women, and in hard-hit nations such as Zambia, girls are five times more likely than boys to be HIV positive.

Here in the United States, 30 percent of new HIV infections each year occur among women, most of whom, 64 percent, are African-American. The majority of U.S. women, 75 percent, acquire the disease through heterosexual transmission. My own State of New Jersey has the Nation's highest HIV/AIDS infection rate among women and the sixth highest infection rate among all adults. And here in our Nation's capital, one in three people with HIV now is a woman.

Biologically, women are four times more vulnerable to HIV infection. Their vulnerability increases due to their lack of economic and social power in many societies, where women often cannot control sexual encounters or insist on protective measures such as abstinence or mutual monogamy. The typical woman who gets infected with HIV has only one partner—her husband. This trend devastates families and puts children at risk.

This astounding reality bears restating: The single greatest risk factor for a woman in the developing world of contracting the HIV virus is being married.

Women need HIV-prevention tools that they can control to safeguard their health and that of their families and communities. Unfortunately, there exists absolutely no HIV or STD prevention method that is within a woman's personal control. Condom use must be negotiated with a partner. We are all aware that for too many women, particularly low-income women in the developing world and many in our own country who rely upon a male partner for economic support, there is no power of negotiation. We know these women are at risk—yet, we expect them to protect themselves without any tools.

Today we have the opportunity to invest in groundbreaking research that can produce these tools, and ultimately, empower women. Microbicides are self-administered products that women could use to prevent transmission of STDs, including HIV/AIDS. I say ''could'' because due to insufficient research investments, no microbicides have been brought to market. This legislation would expand federal investments for microbicide research at the National Institutes for Health, NIH, the Centers for Disease Control and Prevention, CDC, and the United States Agency for International Development, USAID.

In addition to encouraging new investments in microbicide research, the Microbicides Development Act will expedite the implementation of the NIH's five-year strategic plan for microbicide research, as well as expand coordination among Federal agencies already involved in this research, including NIH, CDC, and the United States Agency on International Development, USAID.

Perhaps most importantly, the legislation calls for the establishment of a Microbicide Research and Development Branch within the National Institute of Allergy and Infectious Diseases.

The National Institutes of Health, principally through the National Institute of Allergy and Infectious Diseases, NIAID, spends the majority of Federal dollars in this area. However, microbicide research at NIH is currently conducted with no single line of administrative accountability or specific funding coordination. In addition, other federal agencies such as CDC and USAID undertake microbicides research and development activities. Because there is no federal coordination, however, there is the risk that inefficiencies and duplication of effort could result. Through a variety of committees Congress has requested that NIH and its Office of AIDS Research provide Congress with a ''federal coordination plan'' for research and development in this area, but formal submission of this plan has been repeatedly delayed.

A branch dedicated to microbicide research and development at the NIH is essential to providing the appropriate staff and funding for the coordination of these activities at the NIH and across agencies.

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

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

S. 859

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 ''Microbicide Development Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) During 2002, AIDS caused the deaths of an estimated 3,100,000 people, including 1,200,000 women and 610,000 children under 15 years of age. An estimated 14,000,000 children living today have lost one or both parents due to AIDS.

(2) Worldwide, heterosexual transmission is accounting for an increasing share of new HIV infections, with adolescents, women, and disadvantaged people at particular risk.

(3) In the United States, for example, African American and Latina women account for 64 percent and 17 percent of all reported HIV cases, respectively, even though they represent only 25 percent of the total United States female population.

(4) Half of the 38,600,000 adults living today with HIV/AIDS are women.

(5) Biological, cultural, economic, and social factors combine to make women and girls particularly vulnerable to HIV and other sexually transmitted diseases (referred to in this section as ''STDs''). In the hardest hit areas of Africa, almost one-quarter of 15 to 19 year-old girls are already infected with HIV, compared to 4 percent of their male peers.

(6) In addition to HIV, other STDs can cause serious, costly, even deadly conditions for women and their children, including infertility, pregnancy complications, cervical cancer, infant mortality, and higher risk of contracting HIV. When women become infected with HIV, they risk passing along the infection to their infants, either through pregnancy, childbirth, or breastfeeding.

(7) Regrettably, today's HIV prevention methods do not meet the needs of the millions of women worldwide who, for cultural, economic, and social reasons, cannot insist on protective measures such as abstinence, condom use, or mutual monogamy.

(8) A large majority of women become infected with HIV with only one partner—their husbands. Women need prevention options that they can use consistently within ongoing, long-term relationships.

(9) Microbicides are a promising new technology, complementary to vaccines, that could put the power of prevention into women's hands. Formulated as gels, creams, or films, microbicides inactivate, block, or otherwise interfere with the pathogens that cause HIV/AIDS and other STDs.

(10) Even a moderately effective microbicide could have a substantial impact on the HIV epidemic. The London School of Hygiene and Tropical Medicine estimates that a 60 percent efficacious microbicide introduced into the 73 poorest countries could avert 2,500,000 HIV infections in men, women, and children over 3 years.

(11) Microbicides would also benefit men, because their protective effect is likely to be bidirectional.

(12) Numerous potential microbicides are poised for successful development. Thirteen

products are in clinical trials and approximately 50 compounds exist that could be investigated further. There is a backlog in the research and development pipeline, however, so that innovative and promising product concepts are languishing, while infection rates are growing.

(13) At present, there is insufficient economic incentive for large pharmaceutical companies to become actively engaged in microbicide research and development, thus, Federal support is crucial. Three Federal agencies—the National Institutes of Health, the Centers for Disease Control and Prevention, and the United States Agency for International Development—have played important roles in progress to date, but strong, effective, well-coordinated, and visible public sector leadership will be essential for the promise of microbicides to be realized.

(14) A microbicide could be available within 5 to 7 years if sufficient public sector funding were made available to accelerate research and support the necessary clinical trials.

(15) Microbicide research and development currently receive only 2 percent of the AIDS research budget of the National Institutes of Health, not nearly enough to keep pace with public health need and scientific opportunity.

(16) The United States Agency for International Development sustains strong partnerships with public and private organizations working on microbicide research, importantly including clinical trials in developing countries where its experience is extensive. The long experience of such Agency in logistics management, service delivery, provider training, and social marketing position it well to prepare for and implement the introduction of microbicides once they are available.

(17) The Centers for Disease Control and Prevention also engages in critical microbicide research and clinical testing, and has a long history of conducting field trials in developing countries.

(18) For the microbicide pipeline to advance significantly and the essential clinical trials to be fielded soon, the current amount of Federal investment needs to increase to $130,000,000 in fiscal year 2004 and to $160,000,000 in fiscal year 2005.

TITLE I—MICROBICIDE RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH

SEC. 101. OFFICE OF AIDS RESEARCH; PROGRAM REGARDING MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Subpart I of part D of title XXIII of the Public Health Service Act (42 U.S.C. 300cc–40 et seq.) is amended by inserting after section 2351 the following:

"SEC. 2351A. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) FEDERAL STRATEGIC PLAN.—

''(1) IN GENERAL.—The Director of the Office of AIDS Research shall expedite the development and implementation of a Federal strategic plan for the conduct and support of microbicide research and shall biannually review and as appropriate revise the plan.

''(2) COORDINATION.—In developing, implementing, and reviewing the plan, the Director of the Office of AIDS Research shall coordinate with—

''(A) other Federal agencies, including the Director of the Centers for Disease Control and Prevention and the Administrator of the United States Agency for International Development, involved in microbicide research;

''(B) the microbicide research community; and

''(C) health advocates.

''(b) EXPANSION AND COORDINATION OF ACTIVITIES.—The Director of the Office of AIDS Research, acting in coordination with other relevant institutes and offices, shall expand, intensify, and coordinate the activities of all appropriate institutes and components of the National Institutes of Health with respect to research on the development of microbicides to prevent the transmission of HIV and other sexually transmitted diseases.

''(c) MICROBICIDE DEVELOPMENT BRANCH.—In carrying out subsection (b), the Director of the National Institute of Allergy and Infectious Diseases shall establish within the Vaccine and Prevention Research Program of the Division of AIDS in the Institute, a branch charged with carrying out microbicide research and development. In establishing such branch, the Director shall ensure that there are a sufficient number of employees dedicated to carry out the mission of the branch.

''(d) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date on which the initial Federal strategic plan is developed under subsection (a), and biannually thereafter, the Director of the Office of AIDS Research shall submit to the appropriate committees of Congress a report that describes the strategies being implemented by the Federal Government regarding microbicide research and development. Each such report shall include—

''(A) a description of activities with respect to microbicides conducted and supported by the Federal Government;

''(B) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities within each agency;

''(C) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides;

''(D) a review of the remaining scientific and programmatic obstacles with respect to microbicides; and

''(E) an updated Federal Strategic Plan, including professional judgment funding projections.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINITION.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate.

''(e) HIV DEFINITION.—For purposes of this section, the term 'HIV' means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

''(f) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.''.

TITLE II—MICROBICIDE RESEARCH AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION

SEC. 201. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended—

(1) by transferring section 317R so as to appear after section 317Q; and

(2) by inserting after section 317R (as so transferred) the following:

"SEC. 317S. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA SUPPORTED BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION.—The Director of the Centers for Disease Control and Prevention shall fully implement the Center's 5-year topical microbicide agenda to support microbicide research and development. Such an agenda shall include—

''(1) conducting laboratory research in preparation for, and support of, clinical microbicide trials;

''(2) conducting behavioral research in preparation for, and support of, clinical microbicide trials;

''(3) developing and characterizing domestic populations and international cohorts appropriate for Phase I, II, and III clinical trials of candidate topical microbicides;

''(4) conducting Phase I and II clinical trials to assess the safety and acceptability of candidate microbicides;

''(5) conducting Phase III clinical trials to assess the efficacy of candidate microbicides;

''(6) providing technical assistance to, and consulting with, a wide variety of domestic and international entities involved in developing and evaluating topical microbicides, including health agencies, extramural researchers, industry, health advocates, and nonprofit organizations; and

''(7) developing and evaluating the diffusion and effects of implementation strategies for use of effective topical microbicides.

''(b) STAFFING.—In carrying out the microbicide agenda, the Centers for Disease Control and Prevention shall ensure that there are sufficient numbers of dedicated employees for carrying out the agenda under subsection (a).

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Director of the Centers for Disease Control and Prevention shall submit to the appropriate committees of Congress, a report on the strategies being implemented by the Centers for Disease Control and Prevention with respect to microbicide research and development. Such report shall be submitted alone or as part of the overall Federal strategic plan on microbicides compiled annually by the National Institutes of Health Office of AIDS Research as required under section 2351A. Such report shall include—

''(A) a description of activities with respect to microbicides conducted and supported by the Centers for Disease Control and Prevention;

''(B) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities;

''(C) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides; and

''(D) a review of the remaining scientific and programmatic obstacles with respect to microbicides.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINITION.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate.

''(d) DEFINITION.—For the purposes of this section, the term 'HIV' means the human

immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.''.

TITLE III—MICROBICIDE RESEARCH AT THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 301. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by inserting after section 104 the following:

''SEC. 104A. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

''(a) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA SUPPORTED BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT.—The Office of HIV/AIDS of the Agency for International Development, in conjunction with other offices within the Agency for International Development, shall fully implement the Agency's microbicide agenda to support the development of microbicides, and facilitate wide-scale introduction once microbicide products are available. Such an agenda shall include—

''(1) support for the discovery, development, and preclinical evaluation of topical microbicides;

''(2) support for the conduct of clinical studies of candidate microbicides to assess safety, acceptability, and effectiveness in reducing HIV and other sexually transmitted diseases;

''(3) support for behavioral and social science research relevant to microbicide development, testing, acceptability, and use;

''(4) support for preintroductory and introductory studies of safe and effective microbicides in developing countries; and

''(5) facilitation of access to microbicides as they become available to women at highest risk of HIV and other sexually transmitted diseases as soon as possible.

''(b) STAFFING.—The Office of HIV/AIDS of the Agency for International Development shall ensure that there are sufficient numbers of dedicated employees for purposes of carrying out the agenda under subsection (a).

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Administrator of the Agency for International Development shall submit to the appropriate committees of Congress a report on the strategies being implemented by the Agency for International Development with respect to microbicide research and development. Such report shall be submitted alone or as part of the overall Federal strategic plan on microbicides compiled annually by the National Institutes of Health Office of AIDS Research as required under section 2351A. Such report shall include—

''(1) a description of activities with respect to microbicides conducted and supported by the Agency for International Development;

''(2) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities;

''(3) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides;

''(4) a review of the remaining scientific and programmatic obstacles with respect to microbicides; and

''(5) a description of the steps being taken to increase access and availability of approved microbicides to prevent HIV and other sexually transmitted diseases.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINITION.—For the purposes of this subsection, the term 'appropriate committees of Congress' means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

''(d) DEFINITION.—For the purposes of this section, the term 'HIV' means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.''.

Mr. DURBIN. Mr. President, I am honored to be a cosponsor of the Microbicides Development Act of 2003. The legislation calls for a redoubling of the effort at the National Institutes of Health and the Centers for Disease Control to develop microbicides, a class of products that can prevent transmission of HIV and other sexually transmitted diseases in women and their partners.

As this Congress continues to fight AIDS, taking tiny steps in pursuit of a challenge racing away from us, I see the development of microbicides as another ''tiny'' step forward. I believe microbicides are an important addition to the arsenal to fighting AIDS, and indeed the Global AIDS bill I introduced, The Global CARE Act of 2003, S. 250, includes microbicides among the preventative measures the U.S. should support.

I, and the other cosponsors of this important legislation, see a real need and urgency to expand the range of preventive interventions for HIV transmission. The ABC options for preventing HIV infection, which remain a key part of our response and contribute to the world's ability to slow the spread of HIV/AIDS, have not changed since the 1980s: A, abstinence when it comes to sexual activity; B, be faithful to one partner; C, if you are going to ignore the other two, use a condom. Despite the effectiveness of the ABCs in many areas, HIV/AIDS continues to spread. We urgently need more prevention options.

Microbicides, defined as antimicrobial products that can be applied topically for the prevention of sexually transmitted diseases, STDs, including HIV, may offer one of the most promising preventive interventions. They could prove to be safe, effective, inexpensive, readily available, and widely acceptable. Microbicides will add to the range of options available. Most importantly, microbicides offer an additional method of prevention that can be controlled by women.

Notwithstanding the knowledge of successful HIV prevention strategies—condom use, reduction in the number of sexual partners, diagnosis and treatment of sexually transmitted infections—HIV continues to spread at an alarming rate especially among women in developing countries.

In sub-Saharan Africa, the area hardest hit by the pandemic, women and girls account for 58 percent of those living with AIDS. Worldwide, women represent 50 percent of those infected, an increase of 9 percent in five years. In some of the hardest hit countries in southern Saharan Africa, HIV prevalence among girls aged 15 to 19 is four to seven times higher than among boys their age. Attitudes, beliefs, and taboos surrounding sex, the status of women and children, and the source and causes of AIDS also complicate attempts to control transmission and provide appropriate prevention and treatment.

In the United States, more than 30 percent of newly reported HIV cases diagnosed are occurring in women, according to the most recent data collected by the Centers of Disease Control. As in the rest of the world, the majority of these reported HIV infections among U.S. women result from heterosexual transmission, and the data suggest that younger women are disproportionately at risk for acquiring HIV.

Microbicides will be particularly attractive to those who do not wish to draw attention to the fact that they are using a prevention method. Unlike male or female condoms, microbicides are a potential preventive option that women can easily control and that does not require the cooperation, consent or even knowledge of the partner. Microbicides are likely to be cheaper than condoms and, in the future, microbicides could be used to prevent mother-to-child transmission of HIV.

Microbicides have been under development for more than a decade. Yet, it is unlikely that they will be available before 2007, which leads to the general perception that there has been insufficient progress in this area. Three versions are currently in the final stages of clinical trials to determine whether they are safe and effective. Many factors contribute to this slow progress. The National Institutes of Health, NIH, reports that microbicide research requires huge and complex efficacy and effectiveness studies that must be conducted in areas with high HIV incidence rates. Such rates occur predominantly in developing countries where the research infrastructure is underdeveloped. Given this dependency on poorer, developing nations, it is not surprising that no large pharmaceutical company is interested in funding microbicide development. A second obstacle lies in the ethical obligation to provide counseling and make condoms available to the study subjects, which adds to the complexity and

size of the trials. As a result, NIH explains, few Phase III efficacy trials have been completed. Of those completed, few have yielded promising results.

Reflecting on the reality of the global epidemic, United Nations Secretary General Kofi Annan stated that the face of the HIV epidemic is that of a woman. ''If you want to save Africa,'' Annan says, ''you must save the African woman first. It is they who care for the young, the old, the sick and the dying. It is they who nurture social networks that help societies share burdens.''

Lack of access to treatment and care means that for the majority of HIV-positive women throughout the world, HIV infection is a death sentence. In Haiti, for example, AIDS is now the leading cause of death for women of childbearing age.

Microbicides will never become a viable option for prevention unless a serious amount of money is invested in their development. Senator CORZINE's legislation will make microbicide research a priority, calling for the expansion and coordination of microbicide activities at the National Institutes of Health and other agencies working in this field. The bill requires the Centers for Disease Control to implement a 5-year topical research plan and requires the U.S. Agency for International Development to develop and implement a microbicide agenda.

I am proud to join Senator CORZINE as a cosponsor of this legislation and hope that my colleagues will join us as we determine the next steps in our battle against AIDS, including the development of prevention efforts that may help women take control of their lives and their survival.

By Mr. HOLLINGS (for himself, Mr. GREGG, Mr. KERRY, Ms. SNOWE, Mr. INOUYE, Mr. REED, Mr. BREAUX, Mr. DEWINE, Mr. SARBANES, Mr. BIDEN, Mr. KENNEDY, Ms. MIKULSKI, Mr. COCHRAN, Mrs. MURRAY, Mr. CORZINE, Ms. COLLINS, Mr. DODD, Mr. LEVIN, Mr. NELSON of Florida, Mr. WYDEN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. CANTWELL, and Mr. CHAFEE):

S. 861. A bill to authorize the acquisition of interests in undeveloped coastal areas in order to better ensure their protection from development; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise today with my colleague Senator GREGG to introduce the Coastal and Estuarine Land Protection Act of 2003. Senator GREGG and I introduced this bill last session, and it was reported favorably by the Commerce Committee, but time did not permit action to be completed on the bill before the end of the Congress. My colleagues and I will work hard to pass this important piece of legislation during the 108th Congress.

I would like to thank our cosponsors, 24 in all, Senators KERRY, SNOWE, INOUYE, JACK REED, BREAUX, DEWINE, SARBANES, BIDEN, KENNEDY, MIKULSKI, COCHRAN, MURRAY, CORZINE, COLLINS, DODD, LEVIN, BILL NELSON, WYDEN, LIEBERMAN, FEINSTEIN, LAUTENBERG, CANTWELL, and CHAFEE for their strong support of this bill, which marks another important chapter of our thirty year effort to put coastal and ocean issues at the forefront of environmental policy.

I am also proud to say that the bill is strongly supported by The Trust for Public Land, Coastal States Organization, The Nature Conservancy, Land Trust Alliance, International Association of Fish and Wildlife Agencies, American Sportfishing Association, and the South Carolina Wildlife Federation. I understand that the U.S. Commission on Ocean Policy will also endorse this approach.

When I was Governor of South Carolina over 30 years ago, I experienced first hand the need for Federal direction and assistance to the States to enable them to effectively and sustainably manage coastal development. My experiences during a series of coastal hearings and continued research in the Senate led me to write the Coastal Zone Management Act of 1972, which provided clear policy objectives for states to establish coordinated coastal zone management programs to help balance coastal development with protection.

But we appear to need more tools to help States continue the job we started in 1972. In the year 2003, as our population grows, more and more people are moving to the coast to enjoy its beauty and recreational opportunities. In fact, by 2010, an estimated 60 percent of Americans will live along our coasts, which represent less than 17 percent of our land area. More than 3,000 people move to coastal areas everyday, and 14 of the Nation's 20 largest cities are on the coast, and are five times more densely populated than the interior of the country. As these good folks move to take advantage of coastal living, we have to be careful that we don't destroy the natural resources and quality of life that draw them to our shores. Big changes are coming to all of our coastal counties, and we must make some careful and smart decisions if we want to keep the very resources we depend on.

In particular, estuaries and wetlands have many unique attributes that make them important to both our natural resources and our economy. Estuaries, and the watersheds that flow into them, support fisheries and wildlife and contribute immensely to the coastal area economies. But these ecologically and economically important watersheds are also under the most threat from land development and conversion away from their natural state. Coastal urbanization trends are particularly strong in the southeastern areas. In my State alone, the Forest Service has estimated natural forests of the coastal plain will decrease by 1.9 million acres in the next 40 years—a 35 percent loss of South Carolina's forests. These findings and future trends tell me that for the good of our coastal communities we need some fast, targeted action to protect ecologically important coastal areas most threatened with development or conversion.

Now more than ever, the pressures of urbanization and pollution along our nation's coasts threaten to impair watersheds, impact wildlife habitat and cause irreparable damage to the fragile coastal ecology. The Environmental Protection Agency has reported that some areas of the country are seeing some improvement from the heavily polluted status of the past, but predicts that the more pristine areas like the Southeast, which has some of the best water quality in the Nation, will experience degradation of water quality due primarily to runoff of pollutants from rapid development in our coastal watersheds. This is very bad news for the shrimpers, oystermen, and recreational users who depend on these waters for their livelihood and quality of life.

We see strong signals of what continuing down this path will bring us: beach and shellfish closings, fish kills, and human health impacts. The National Research Council reports that over the next 20 years over 70 percent of our estuaries will experience more low oxygen—or ''eutrophic''—conditions, such as the Gulf ''Dead Zone.'' If this trend continues, our coastal economies will suffer and perhaps never recover. I know in my state the economy would falter greatly from the lack of fishing, shrimping and tourism opportunities, and this is true up and down the Atlantic coast, which contains 37 percent of the Nation's estuarine areas.

The good news is that there are ways we can make a difference, and we have some good models we can turn to. I am proud to say my home State of South Carolina is a leader in this area. The past decade I have led an extensive cooperative conservation effort, bringing together the State of South Carolina, private landowners, groups like the Nature Conservancy, Ducks Unlimited and federal partners like NOAA and the Fish and Wildlife Service to protect the ACE Basin. It is now the largest pristine estuarine reserve on the East Coast, a 350,000-acre area at the convergence of the Edisto, Ashepoo and Combahee Rivers, which comprises many ecologically important habitats that are home to many fish and bird species, including a number of endangered species. An outcome of these efforts is that the ACE Basin, already home to a National Wildlife Refuge, was declared a National Estuarine Research Reserve in 1992, and has been growing in size ever since. In building the ACE Basin, the partners worked creatively and in a coordinated manner, and we successfully obtained land acquisition funds through a variety of

federal sources, including the Forest Legacy Program.

What became clear, however, is that there is no Federal program explicitly setting aside funding for conservation of coastal lands, where the needs are clearly the greatest. That is exactly what the Coastal and Estuarine Land Protection Act of 2003 will do. It authorizes a competitive matching grant program in NOAA to enable states to permanently protect important coastal areas.

Under this NOAA program, coastal states can compete for matching funds of up to 75 percent to acquire land or easements for the protection of endangered coastal areas that have considerable conservation, recreation, ecological, historical or aesthetic values threatened by development or conversion. The bill also provides funding for a regional watershed demonstration project that can be used as a model for future watershed-scale programs. The program is authorized at $60 million for fiscal year 2004 and beyond, with an additional $5 million for the regional watershed demonstration project.

By establishing a plan for the preservation of our coastal areas, the Coastal and Estuarine Land Protection Act will build on the foundation laid down by the CZMA, all in stride with the changing times, growing number of people, and limited resources available today. When it comes to the environment, rules and regulations sometimes can't do it all. Sometimes cooperative actions work better and we can turn to models that encourage joint conservation projects among folks who all want the same thing—sustainable coasts.

Partnership programs among federal government, state agencies, local governments, private landowners and nonprofits, like the ACE Basin Project, work and we need to encourage these partnerships in all our coastal areas if we are to prevent degradation of our coastal resources. The good news is that we can make a difference today by providing the funding for land conservation partnerships provided for by the Coastal and Estuarine Land Protection Act. I am proud to be a sponsor of this bill, which will not only improve the quality of the coastal areas and marine life it supports, but also sustain surrounding communities and their way of life.

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. 861

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 ''Coastal and Estuarine Land Protection Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Coastal and estuarine areas provide important nursery habitat for two-thirds of the nation's commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural plant communities, and serve to facilitate coastal flood control and pollutant filtration.

(2) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) recognizes the national importance of these areas and their ecological vulnerability to anthropogenic activities by establishing a comprehensive Federal-State partnership for protecting natural reserves and managing growth in these areas.

(3) The National Estuarine Research Reserve system established under that Act relies on the protection of pristine designated areas for long-term protection and for the conduct of education and research critical to the protection and conservation of coastal and estuarine resources.

(4) Intense development pressures within the coastal zone are driving the need to provide coastal managers with a wider range of tools to protect and conserve important coastal and estuarine areas.

(5) Protection of undeveloped coastal lands through the acquisition of interests in property from a willing seller are a cost-effective means of providing these areas with permanent protection from development.

(6) Permanent protection of lands in the coastal zone is a necessary component of any program to maintain and enhance coastal and estuarine areas for the benefit of the Nation, including protection of water quality, access to public beachfront, conserving wildlife habitat, and sustaining sport and commercial fisheries.

(7) Federal-State-nongovernmental organization pilot land acquisition projects have already substantially contributed to the long-term health and viability of coastal and estuarine systems.

(8) Enhanced protection of estuarine and coastal areas can be attained through watershed-based acquisition strategies coordinated through Federal, State, regional, and local efforts.

SEC. 3. ESTABLISHMENT OF COASTAL AND ESTUARINE LAND PROTECTION PROGRAM.

(a) IN GENERAL.—The Secretary of Commerce shall establish a Coastal and Estuarine Land Protection Program, in cooperation with appropriate State, regional, and other units of government for the purposes of protecting the environmental integrity of important coastal and estuarine areas, including wetlands and forests, that have significant conservation, recreation, ecological, historical, or aesthetic values, and that are threatened by conversion from their natural, undeveloped, or recreational state to other uses. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

(b) PROPERTY ACQUISITION GRANTS.—The Secretary shall make grants under the program to coastal States, except coastal States that have lost less than 1 percent of their wetlands to development or conversion to other land uses by the date of enactment of this Act, with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

(1) a Coastal Zone Management Plan or Program approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); or

(2) a National Estuarine Research Reserve management plan; or

(3) a regional or State watershed protection plan involving coastal States with approved coastal zone management plans.

(c) GRANT PROCESS.—The Secretary shall allocate funds to coastal States or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

(1) The Secretary shall consult with the State's coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the establishment and implementation of this Act (if different from the coastal zone management program).

(2) Each participating State shall identify priority conservation needs within the State, the values to be protected by inclusion of lands of the program, and the threats to those values that should be avoided.

(3) Each participating State shall evaluate how the acquisition of property or easements might impact working waterfront needs.

(4) The applicant shall identify the values to be protected by inclusion of the lands in the programs, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.

(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) Applications must be determined to be consistent with the State's or territory's approved coastal zone plan, program and policies prior to submittal to the Secretary.

(7) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological or watershed protection value.

(8) In developing guidelines under this section, the Secretary shall consult with other Federal agencies and non-governmental entities expert in land acquisition and conservation procedures.

(9) Eligible States or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 306A(e) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a) and may acquire lands in cooperation with nongovernmental entities and Federal agencies.

(10) The Secretary shall develop performance measures that will allow periodic evaluation of the program's effectiveness in meeting the purposes of this section and such evaluation shall be reported to Congress.

(d) MATCHING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

(2) MAXIMUM FEDERAL SHARE.—

(A) 75 PERCENT FEDERAL FUNDS.—No more than 75 percent of the funding for any grant under this section shall be derived from Federal sources, unless such requirement is specifically waived by the Secretary.

(B) WAIVER OF REQUIREMENT.—The Secretary may grant a waiver of the limitation in subparagraph (A) for underserved communities, communities that have an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary deems appropriate.

(3) OTHER FEDERAL FUNDS.—Where financial assistance awarded under this section represents only a portion of the total cost of a project, funding from other Federal sources

may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

(4) SOURCE OF MATCHING COST SHARE.—For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking into account the following:

(A) Land value may be used as non-Federal match if the lands are identified in project plans and acquired within three years prior to the submission of the project application or after the submission of a project application until the project grant is closed (not to exceed 3 years). The appraised value of the land at the time of project closing will be considered the non-Federal cost share.

(B) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award. These costs may include either case or in-kind contributions.

(e) REGIONAL WATERSHED DEMONSTRATION PROJECT.—The Secretary may provide up to $5,000,000 for a regional watershed protection demonstration project that will meet the requirements of this section, and—

(1) leverages land acquisition funding from other Federal land conservation or acquisition programs such that other Federal contributions, at a minimum, equal the amounts provided by the Secretary;

(2) involves partnerships from a broad spectrum of Federal, State, and non-governmental entities;

(3) provides for the creation of conservation corridors and preservation of unique coastal habitat;

(4) protects largely unfragmented habitat under imminent threat of development or conversion;

(5) provides water quality protection for areas set aside for research under the National Estuarine Research Reserve program; and

(6) provides a model for future regional watershed protection projects.

(f) RESERVATION OF FUNDS FOR NATIONAL ESTUARINE RESEARCH RESERVE SITES.—No less than 15 percent of funds made available under this section shall be available for acquisitions benefiting National Estuarine Research Reserve acquisitions.

(g) LIMIT ON ADMINISTRATIVE COSTS.—No more than 5 percent of the funds made available to the Secretary under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an account of all expenditures under this section for fiscal year 2004, fiscal year 2005, and triennially thereafter.

(h) TITLE AND MANAGEMENT OF ACQUIRED PROPERTY.—

(1) IN GENERAL.—If any property is acquired in whole or in part with funds made available through a grant under this section, the grant recipient shall provide such assurances as the Secretary may require that—

(A) the title to the property will be held by the grant recipient or other appropriate public agency designated by the recipient in perpetuity;

(B) the property will be managed in a manner that is consistent with the purposes for which the land entered into the program and shall not convert such property to other uses; and

(C) if the property or interest in land is sold, exchanged, or divested, funds equal to the correct value will be returned to the Secretary, for re-distribution in the grant process.

(2) CONSERVATION EASEMENT.—In this subsection, the term ''conservation easement'' includes an easement, recorded deed, or interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this Act except those rights, title, and interests that may run with the land that are expressly reserved by a grantor and are agreed to at the time of purchase.

(d) DEFINITIONS.—In this section, the term ''coastal State'' has the meaning given that term by section 304(4) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(4)), and any other term used in this section that is defined in section 304 of that Act has the meaning given that term in that section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary—

(1) $60,000,000 for each of fiscal years 2004 through 2007 to carry out this section (other than subsection (e)); and

(2) $5,000,000 for fiscal year 2004 to carry out subsection (e), such sum to remain available without fiscal year limitation.

SEC. 4. ASSISTANCE FROM OTHER AGENCIES.

Section 310(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456c(a)) is amended by striking ''any qualified person for the purposes of carrying out this subsection.'' and inserting ''any other Federal agencies (including interagency financing of Coastal America activities) and any other qualified person for the purposes of carrying out this section.''.

Mr. GREGG. Mr. President, I rise today along with Senator HOLLINGS to introduce the Coastal and Estuarine Land Protection Act. We are introducing this much needed coastal protection act along with Senators KERRY, SNOWE, INOUYE, REED, BREAUX, DEWINE, SARBANES, BIDEN, KENNEDY, MIKULSKI, COCHRAN, MURRAY, CORZINE, COLLINS, DODD, LEVIN, NELSON, WYDEN, LIEBERMAN, FEINSTEIN, LAUTENBERG, CANTWELL, and CHAFEE. In addition, this legislation is supported by the Trust for Public Land, the Coastal States Organization, the Nature Conservancy, International Association of Fish and Wildlife Agencies, American Sportfishing Association, and the Land Trust Alliance.

The Coastal and Estuarine Land Protection Act promotes coordinated land acquisition and protection efforts in coastal and estuarine areas by fostering partnerships between non-governmental organizations and Federal, State, and local governments. With Americans rapidly moving to the coast, pressures to develop critical coastal ecosystems are increasing. There are fewer and fewer undeveloped and pristine areas left in the Nation's coastal and estuarine watersheds. These areas provide important nursery habitat for two-thirds of the Nation's commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural plant communities, and serve to facilitate coastal flood control and pollutant filtration.

The Coastal and Estuarine Land Protection Act pairs willing sellers through community-based initiatives with sources of Federal funds to enhance environmental protection. Lands can be acquired in full or through easements, and none of the lands purchased through this program would be held by the Federal Government. This bill puts land conservation initiatives in the hands of state and local communities. This new program, authorized through the National Oceanic and Atmospheric Administration at $60,000,000 per year, would provide Federal matching funds to States with approved coastal management programs or to National Estuarine Research Reserves through a competitive grant process. Federal matching funds may not exceed 75 percent of the cost of a project under this program, and non-Federal sources may count in-kind support toward their portion of the cost share.

This coastal land protection program provides much needed support for local coastal conservation initiatives throughout the country. In my role on the Commerce, Justice, State Appropriations Subcommittee, I have been able to secure significant funds for the Great Bay estuary in New Hampshire. This estuary is the jewel of the seacoast region, and is home to a wide variety of plants and animal species that are particularly threatened by encroaching development and environmental pollutants. By working with local communities to purchase lands or easements on these valuable parcels of land, New Hampshire has been able to successfully conserve the natural and scenic heritage of this vital estuary.

Programs like the Coastal and Estuarine Land Protection Program will now enable other States to participate in these community-based conservation efforts in coastal areas. This program was modeled after the U.S. Department of Agriculture's successful Forest Legacy Program, which has conserved millions of acres of productive and ecologically significant forest land around the country.

I welcome the opportunity to offer this important legislation, with my close friend, Senator HOLLINGS. I am thankful for his strong leadership on this issue, and look forward to working with him to make the vision for this legislation a reality, and to successfully conserve our coastal lands for their ecological, historical, recreational, and aesthetic values.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, Ms. COLLINS, Mr. LEVIN, and Mr. JOHNSON):

S. 862. A bill to promote the adoption of children with special needs; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Adoption Equality Act of 2003. I am proud to have a bipartisan group of cosponsors including Senators DEWINE, LANDRIEU, COLLINS, LEVIN and JOHNSON. Work on this legislation is based on the bipartisan work of the Senate coalition that supported the 1997 Adoption and Safe Families Act, an historic effort to ensure that a child's safety and health are paramount, and that every child should have a permanent home.

The Adoption and Safe Families Act was the most sweeping and comprehensive piece of child welfare legislation passed in over a decade, and since its enactment, adoptions from our foster care system have nearly doubled. In my State of West Virginia, adoptions have nearly tripled. Those adopted children now have a permanent home. But there are still 131,000 in foster care nationwide who have the goal of adoption but are still waiting. In West Virginia, we have 520 children in foster care waiting for adoption, but only 343 children might qualify for support. I believe each child with special needs who is waiting for adoption deserves help but under current law only some do. They are the innocent ones who were victims of abuse and neglect. Clearly we must do more for those children.

Throughout the process of developing the Adoption Act we heard about the challenging circumstances facing children described as having ''special needs''. These include children who are the most difficult to place into permanent homes, often due to their age, disability or status as part of a group of siblings needing to be placed together.

One of the most significant provisions of ASFA was the assurance of ongoing health care coverage for all children with special needs who move from foster care to adoption. Parents willing to adopt such children were promised health care coverage in 1997 which is essential.

While all special needs children that are adopted maintain health care coverage, only half are eligible for adoption assistance payments. Current law provides for the payment of federal adoption subsidies to families who adopt only those special needs children whose biological family would have qualified for welfare benefits under the old 1996 AFDC standards. Federal adoption subsidy payments provide essential income support to help families finance the daily basic costs of raising these special children, as well as support for special services like therapy, tutoring, or special equipment for disabled children. Federal adoption subsidies are a vital link in securing adoptive homes for special needs children who by definition would not be adopted without support.

Under current law, a child's eligibility for these important benefits is dependent on the income of his or her biological parents even though these parents' legal rights to the child have been terminated, and these are the parents who either abused or neglected the child. This is, simply, wrong. The Adoption Equality Act will eliminate this anomaly in Federal law by making all special needs children eligible for Federal adoption subsidies.

The Adoption Equality Act is the next logical step to streamline and promote adoptions from foster care. The bill is designed to ''level the playing field'' by ensuring that all children with special needs, and the loving families who adopt them, have the support they need to grow and develop.

First, the bill removes the requirement that an income eligibility determination be made in regard to the child's biological parents, whom the child is leaving, thereby allowing Federal adoption subsidy to be paid to all families who adopt children who meet the definition of special needs.

Second, the bill continues to give states flexibility to determine the definition of a child with special needs, but it is clear that adoption subsidies should only be provided if the child could not be adopted without such assistance.

Third, the bill requires that States reinvest the monies they save as a result of this bill back into their state child abuse and neglect programs which should help promote prevention and family support.

When we talk about how to help abused and neglected children in this country, many complex questions are raised about what constitutes best policy, and how Federal tax dollars should be spent. Yet, at the heart of all the questions are vulnerable children who desperately want a safe, permanent home. The lack of modest financial resources to support these adoptions is often the only barrier that stands between an abused child and a safe, loving and permanent home.

Federal adoption subsidies are designed to encourage adoption of children with special needs—those children who have the hardest time finding permanent, adoptive families. It is an absurd policy to discriminate against thousands of children with special needs based upon the income of their biological, and often abusive, parents. It is time to create a Federal policy that levels the playing field and gives all children with special needs an equal and fair chance at being adopted.

The Adoption Equality Act will treat every special needs child the same. It is designed to encourage adoption and support those admirable parents willing to help a child with special needs and a history of abuse or neglect. Such children may have physical disabilities, or other may have emotional challenges due to past abuse and neglect. Such children and families often need special counseling or support services, and that is why the adoption assistance payments are key. If we want to truly help our most vulnerable children find a permanent home, this is a wise investment.

By Mr. EDWARDS (for himself, Mr. MILLER, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 863. A bill to amend the Higher Education Act of 1965 to allow soldiers to serve their country without being disadvantaged financially by Federal student aid programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. EDWARDS (for himself, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 864. A bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, I rise today to introduce two important pieces of legislation that offer a helping hand to the members and families of the National Guard, the Reserves, and the regular active-duty military.

The National Guard and Reserves used to be called ''forces of last resort,'' but they have become much more. Between 1945 and 1989, the Guard and Reserves were activated four times. Only four times in 45 years. Between 1990 and the present, in less than 15 years, the Guard and Reserves were activated six times. They have become a central element of our national defense.

We've come to rely on them to fight side-by-side with full-time active duty soldiers. Each time our Nation has needed them, the Guard and Reserves members have left their jobs, their homes, and their families to serve this nation with pride and distinction. They view activation as an opportunity for service, but the truth is that activation does cause challenges at home. We should do right by them.

Over the past few weeks, this body has considered a number of important measures for the Guard, the Reserves, and our entire military. I was pleased to support Senator LANDRIEU's amendment to raise combat and family separation pay and to modernize equipment. I also supported Senator LINCOLN's effort to make sure that all members of the National Guard and Reserves can participate in the same health program that's available to full-time soldiers and their families. It's hard to believe, but 20 percent of the men and women in the Guard and Reserves don't even have health insurance.

Today, I am introducing two new pieces of legislation to address unique difficulties facing Guard and Reserve members and, in fact, members of the regular military as well. I've traveled around the bases in my State and, time and time again, soldiers and their families have told me they need help.

My first proposal is for child care. A few weeks ago, I outlined my ideas for addressing the growing challenges facing working families. Parents are working longer hours, earning less, and spending less time with their kids. One idea I offered was expanding after-school programs for kids of working parents.

The child care crunch is enormously exacerbated for military families. When one parent is called away, the other must take on all the responsibilities around the home. And at the same time, many members of the Guard and

Reserves take a pay cut, making it more difficult to hire help.

Families can get child care on a military base, which is great for some families. But members of the Guard in North Wilkesboro, for example, live 173 miles away from the nearest military installation. Those families are totally left out.

My National Guard and Reserves Child Care Relief Act would give families financial help for child care in their hometown. We would help families with a mom or dad called away on active duty. This is a concrete, practical way to make a difference in people's lives.

I also have a bill to provide some help paying for education for the men and women who serve our country in the military. Nearly a quarter of Guardsmen and Reservists are college students, and many more are graduates with student loans.

While these patriots are fighting for their country overseas, we charge them interest on their student loans here at home. This happens even if they're serving on the frontlines in Iraq; even if they took a huge pay cut because they're in the Guard or Reserves; even if they have a very low income to begin with.

For somebody with an average size loan of $17,000, this can add up to as much as $1,400 in interest a year. That's not right. No one should return to civilian life deeper in debt because they took time off to serve their country. We should waive the interest on these Federal loans.

The Secretary of Education has the authority to waive interest under the HEROES Act of 2001, but he has chosen not to exercise it. My Fairness for America's Soldiers in Higher Education Act would require him to do just that.

It would also permanently end an Education Department policy-suspended during the current conflict—that makes many guardsmen and reservists who have to drop college courses when they are activated pay back student aid.

As we consider trillion-dollar budgets, these are modest ideas, but they would make a real difference in the lives of Americans serving their country and signal our appreciation for their sacrifice.

I urge my colleagues to support these important bills. I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the texts of the bills were ordered to be printed in the RECORD, as follows:

S. 863

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 ''Fairness for America's Soldiers in Higher Education Act of 2003''.

SEC. 2. REFUND POLICY.

Section 484B(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1091b(b)(2)) is amended by adding at the end the following:

''(D) STUDENTS ON ACTIVE DUTY DURING A WAR OR NATIONAL EMERGENCY.—Notwithstanding subparagraphs (A), (B), and (C), a student who withdraws from an institution of higher education to serve on active duty during a war or national emergency shall not be required to repay any grant assistance that is otherwise required to be repayed under this section.''.

SEC. 3. DEFERMENT DURING ACTIVE DUTY.

(a) FFEL AND DIRECT SUBSIDIZED LOANS.—Section 428(b)(1)(M) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) in clause (ii), by striking ''or'' after the semicolon;

(2) in clause (iii), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iii) the following:

''(iv) during which the borrower—

''(I) is a member of a regular component on active duty during a war or during a national emergency declared by the President or Congress, and receives compensation described in section 112(a) of the Internal Revenue Code of 1986;

''(II) is on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, 12304, 12306, 12307, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law, during a war or during a national emergency declared by the President or Congress, regardless of the location at which such active duty service is performed; or

''(III) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 12402 of title 10, United States Code, or section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.''.

(b) CONSOLIDATION LOANS.—Section 428C(b)(4)(C)(ii) of the Higher Education Act of 1965 (20 U.S.C. 1078–3(b)(4)(C)(ii)) is amended—

(1) in subclause (II), by striking ''or'' after the semicolon;

(2) in subclause (III), by striking ''or (II)'' and inserting '', (II) or (III)'';

(3) by redesignating subclause (III) (as so amended) as subclause (IV); and

(4) by inserting after subclause (II) the following:

''(III) by the Secretary, in the case of a consolidation loan of a student who is on an active duty deferment under section 428(b)(1)(M)(iv); or''.

(c) FFEL AND DIRECT UNSUBSIDIZED LOANS.—Section 428H(e) of the Higher Education Act of 1965 (20 U.S.C. 1078-8(e)) is amended by adding at the end the following:

''(C) Notwithstanding subparagraph (A), interest on loans made under this section for which payments of principal are deferred because the student is on an active duty deferment under section 428(b)(1)(M)(iv) shall be paid by the Secretary.''.

(d) PERKINS LOANS.—Section 464(c)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) in clause (iii), by striking ''or'' after the semicolon;

(2) in clause (iv), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iv) the following:

''(v) during which the borrower—

''(I) is a member of a regular component on active duty during a war or during a national emergency declared by the President or Congress, and receives compensation described in section 112(a) of the Internal Revenue Code of 1986;

''(II) is on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, 12304, 12306, 12307, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law, during a war or during a national emergency declared by the President or Congress, regardless of the location at which such active duty service is performed; or

''(III) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 12402 of title 10, United States Code, or section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to loans for which the first disbursement is made on or after July 1, 1993, to an individual who is a new borrower (within the meaning of section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) on or after such date.

S. 864

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 ''National Guard and Reserves Child Care Relief Act''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''There is'' and inserting ''(a) IN GENERAL.—There is'';

(2) in subsection (a), as so designated, by inserting ''(except section 658T)'' after ''this subchapter''; and

(3) by adding at the end the following:

''(b) CHILD CARE FOR CERTAIN MILITARY DEPENDENTS.—There is authorized to be appropriated to carry out section 658T $10,000,000 for each of fiscal years 2004 through 2008.''.

SEC. 3. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by adding at the end the following:

''SEC. 658T. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible persons to assist the persons in paying for the cost of child care services provided to dependents by eligible child care providers.

''(b) ELIGIBLE PERSON AND DEPENDENT.—In this section:

''(1) DEPENDENT.—The term 'dependent' means an individual who is—

''(A) a dependent, as defined in section 401 of title 37, United States Code, except that such term does not include a person described in paragraph (1) or (3) of subsection (a) of such section; and

''(B) an individual described in subparagraphs (A) and (B) of section 658P(4).

''(2) ELIGIBLE PERSON.—The term 'eligible person' means a person who—

''(A) is a parent of one or more dependents of—

''(i) a member of a reserve component of the Armed Forces serving on active duty for a period of more than 30 days in support of a military operation pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code; or

''(ii) any other member of the Armed Forces on active duty who, as determined by

the Secretary of the military department concerned, is involved in a military operation;

''(B) has the primary responsibility for the care of one or more such dependents; and

''(C) resides permanently at a location at least 50 miles from—

''(i) the nearest military installation of the Department of Defense where child care facilities and programs are available for use by dependents of the member; and

''(ii) the nearest child development center or family child care home that is funded in whole or in part with appropriations available to the Department of Defense and is available for use by dependents of the member.

''(3) MILITARY OPERATION.—The term 'military operation' means—

''(A) Operation Enduring Freedom;

''(B) Operation Iraqi Freedom;

''(C) Operation Noble Eagle; or

''(D) any successor operation of the United States Armed Forces to an operation named in subparagraph (A), (B), or (C).

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a person shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a description of the eligible child care provider who provides the child care services assisted through the grant.

''(d) RULE.—The provisions of this subchapter, other than section 658P and provisions referenced in section 658P, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.''.

SEC. 4. CONFORMING AMENDMENTS.

Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''appropriated under this subchapter'' and inserting ''appropriated under section 658B(a)''; and

(B) in paragraph (2), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''; and

(2) in subsection (b)(1), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''.

By Mr. MCCAIN (for himself, Mr. DORGAN, Mr. BROWNBACK, and Mr. ENSIGN):

S. 865. A bill to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, today I am joined by Senators DORGAN, BROWNBACK, and ENSIGN in introducing the Commercial Spectrum Enhancement Act. This bill is designed to streamline the process of relocating government users from spectrum reallocated for commercial use.

The bill would establish a separate fund on the books of the United States Treasury called the Spectrum Relocation Fund. When spectrum occupied by a Federal agency is auctioned, the proceeds from the auction would be deposited into the fund. Federal agencies would be able to withdraw from the fund the estimated expenses associated with the relocation, with additional expenses being approved by the Office of Management and Budget, with notice provided to Congress and the General Accounting Office, GAO, as necessary.

Currently, when spectrum assigned to a Government agency is auctioned, the law requires the agency to negotiate with the winning bidder to determine the cost of purchasing or returning new equipment necessary for the agency to transfer out of the spectrum band. These negotiations would be time-consuming and difficult for both parties. This bill would eliminate the need for lengthy negotiations between these parties. Thus it would accelerate the pace of introduction of new services using the spectrum.

Spectrum is a critical resource of our armed services. It is important that any relocation process consider the needs of our military operations. I believe that this bill would allow our military to have confidence that its relocation costs will be fully and timely reimbursed, while providing commercial bidders with certainty regarding the full cost of the right to use the spectrum and the ability to use it in a timely fashion.

Finally, the bill provides important oversight functions for Congress and the GAO to ensure that the fund is used in a manner that is fair and justified. In this way, American taxpayers are assured that their resources are used most efficiently.

Mr. President, 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:

(The bill will be printed in a future edition of the RECORD.)

By Mr. KOHL (for himself, Mr. DURBIN, Mr. SCHUMER, Mr. CORZINE, Mrs. FEINSTEIN, Mr. REED, and Mr. LAUTENBERG):

S. 866. A bill to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun and provide safety standards for child safety locks; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Child Safety Lock Act of 2003, on behalf of myself, Senator DURBIN, Senator SCHUMER, Senator CORZINE, and Senator FEINSTEIN. Our measure will save children's lives by reducing the senseless tragedies that result when children get their hands on improperly stored and unlocked handguns.

Each year, children and teenagers are involved in more than 10,000 accidental shootings in which close to 800 of them die. In addition, each year more than 1,000 young people killed themselves with a firearm—that is almost three per day. Safety locks can be effective in deterring or preventing many of these incidents.

The sad truth is that we are inviting disaster every time an unlocked gun is stored in a place that is still accessible to children. Parents take a number of precautions to ensure their children's safety, from equipping them with bike helmets, to securing them in automobiles, to changing smoke detector batteries. Unfortunately, not all parents are as safety conscious about child proofing their firearms.

Guns are kept in 43 percent of American households with children. In 23 percent of these households, the guns are kept loaded. And alarmingly, in one out of every eight of those homes the loaded guns are left unlocked.

This is wrong and unacceptable.

Such startlingly cold statistics cannot even begin to describe in human terms the daily tragedies that could be prevented by the use of a safety lock.

For example, in January a 21-month-old little boy was fatally shot when he tipped over a laundry hamper containing a loaded handgun. The handgun did not have a lock. The boy had no supervision. The result was tragic. A lock would have also saved the life of a four-year-old in Florida who shot himself playing with his grandfather's gun while the rest of his family was sleeping. Last September, a Detroit mother lost her son because he accidentally shot himself with a gun she had borrowed to protect herself. And, of course, no one will ever forget the Santana High School shooting two years ago, when a high school freshman opened fire on his classmates, killing two and injuring 13 others with a handgun and multiple rounds of ammunition he found at home.

Our legislation will help prevent tragedies like these. It is simple, effective, and straightforward. It requires that a child safety device—or trigger lock—be sold with every handgun. These devices vary in form, but the most common resemble a padlock that wraps around the gun trigger and immobilizes it. Trigger locks can be purchased in virtually any gun store for less than ten dollars. They are already used by tens of thousands of responsible gun owners to protect their firearms from unauthorized use and have surely saved many lives.

Protection is only as good as the safety lock itself, therefore the Child Safety Lock Act of 2003 includes standards for the safety locks. Studies by the Consumer Product Safety Commission and recalls by safety lock manufacturers conclusively demonstrate the child safety locks are often not made well enough. A lock that is easily picked or one that breaks apart with little force defeats the purpose of this bill. We would not use a lock that is less than foolproof to guard our most valuable possessions. We should not use defective locks to protect what is most valuable to us—our children.

Support for this simple, common sense proposal is widespread. In 1999, a child safety lock provision passed the Senate by an overwhelming vote of 78 to 20 as an amendment during the juvenile justice debate. This proposal is as popular with the rest of the country

and the law enforcement community as it was with the 106th Senate. Polls show that between 75 and 80 percent of the American public, including gun owners, favor the mandatory sale of child safety locks with guns. When I surveyed almost 500 of Wisconsin's police chiefs and sheriffs last summer, 90 percent of respondents agreed that child safety locks should be sold with each gun.

During his campaign, President Bush indicated that if Congress passes a bill making child safety locks mandatory he would sign it into law. Two years ago, Attorney General Ashcroft affirmed the Administration's support of the mandatory sale of child safety locks during his confirmation hearings before the Senate Judiciary Committee.

Mr. President, this legislation is necessary to ensure that safety locks are provided with all handguns so that numerous lives are not lost in easily preventable accidents. We already protect children by requiring that seat belts be installed in all automobiles and that childproof safety caps be provided on medicine bottles. We should be no less vigilant when it comes to gun safety. I hope that the Senate will move to pass the Child Safety Lock Act of 2003 so that further unnecessary death and injury can be avoided.

Mr. President, 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. 866

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Safety Lock Act of 2003''.

SEC. 2. REQUIREMENT OF CHILD HANDGUN SAFETY LOCKS.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) The term 'locking device' means a device or locking mechanism that is approved by a licensed firearms manufacturer for use on the handgun with which the device or locking mechanism is sold, delivered, or transferred and that—

''(A) if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

''(B) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

''(C) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.''.

(b) UNLAWFUL ACTS.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) LOCKING DEVICES.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than a licensed manufacturer, licensed importer, or licensed dealer, unless the transferee is provided with a locking device for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A) the manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State or a department, agency, or political subdivision of a State, of a firearm;

''(B) transfer to, or possession by, a law enforcement officer employed by an entity referred to in subparagraph (A) of a firearm for law enforcement purposes (whether on or off duty); or

''(C) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty).''.

(2) EFFECTIVE DATE.—Section 922(z) of title 18, United States Code, as added by this subsection, shall take effect 180 days after the date of enactment of this Act.

(c) LIABILITY; EVIDENCE.—

(1) LIABILITY.—Nothing in this section shall be construed to—

(A) create a cause of action against any firearms dealer or any other person for any civil liability; or

(B) establish any standard of care.

(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(2) by adding at the end the following:

''(p) PENALTIES RELATING TO LOCKING DEVICES.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensee, the Attorney General may, after notice and opportunity for hearing—

''(i) suspend or revoke any license issued to the licensee under this chapter; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $10,000.

''(B) REVIEW.—An action by the Attorney General under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) does not preclude any administrative remedy that is otherwise available to the Attorney General.''.

SEC. 3. AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.

(a) IN GENERAL.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:

''SEC. 39. CHILD HANDGUN SAFETY LOCKS.

''(a) ESTABLISHMENT OF STANDARD.—

''(1) RULEMAKING REQUIRED.—

''(A) INITIATION OF RULEMAKING.—Notwithstanding section 3(a)(1)(E), the Commission shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enactment of the Child Safety Lock Act of 2003 to establish a consumer product safety standard for locking devices. The Commission may extend the 90-day period for good cause.

''(B) FINAL RULE.—Notwithstanding any other provision of law, including chapter 5 of title 5, United States Code, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which it initiated the rulemaking. The Commission may extend that 12-month period for good cause.

''(C) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect 6 months after the date on which the final standard is promulgated.

''(D) STANDARD REQUIREMENTS.—The standard promulgated under this paragraph shall require locking devices that—

''(i) are sufficiently difficult for children to de-activate or remove; and

''(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.

''(2) INAPPLICABLE PROVISIONS.—

''(A) PROVISIONS OF THIS ACT.—Sections 7, 9, and 30(d) shall not apply to the rulemaking proceeding described under paragraph (1). Section 11 shall not apply to any consumer product safety standard promulgated under paragraph (1).

''(B) CHAPTER 5 OF TITLE 5.—Except for section 553, chapter 5 of title 5, United States Code, shall not apply to this section.

''(C) CHAPTER 6 OF TITLE 5.—Chapter 6 of title 5, United States Code, shall not apply to this section.

''(D) NATIONAL ENVIRONMENTAL POLICY ACT.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321) shall not apply to this section.

''(b) NO EFFECT ON STATE LAW.—

''(1) IN GENERAL.—Notwithstanding section 26, this section shall not annul, alter, impair, affect, or exempt any person subject to the provisions of this section from complying with any provision of law of any State or any political subdivision thereof, except to the extent that such provisions of State law are inconsistent with any provision of this section, and then only to the extent of such inconsistency.

''(2) CLARIFICATION.—A provision of State law is not inconsistent with this section if such provision affords greater protection to children from handguns than is afforded by this section.

''(c) ENFORCEMENT.—Notwithstanding subsection (a)(2)(A), the consumer product safety standard promulgated by the Commission pursuant to subsection (a) shall be enforced under this Act as if it were a consumer product safety standard described under section 7(a).

''(d) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) CHILD.—The term 'child' means an individual who has not attained the age of 13 years.

''(2) LOCKING DEVICE.—The term 'locking device' has the meaning given that term in clauses (i) and (iii) of section 921(a)(36) of title 18, United States Code.''.

(b) CONFORMING AMENDMENT.—Section 1 of the Consumer Product Safety Act is amended by adding at the end of the table of contents the following:

''Sec. 39. Child handgun safety locks.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Consumer Product Safety Commission $2,000,000 to carry out the

provisions of section 39 of the Consumer Product Safety Act, as added by this Act.

(2) AVAILABILITY.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

By Mr. BURNS:

S. 867. A bill to designate the facility of the United States Postal Service located at 710 Wick Lane in Billings, Montana, as the ''Ronald Reagan Post Office Building''; to the Committee on Governmental Affairs.

Mr. BURNS. Mr. President, I would like to introduce a bill which names one of our post offices in Billings, Montana, after one of this Nation's greatest leaders and true patriot: former President Ronald Reagan. His legacy extends far beyond his Presidency. I think it's only fitting that I introduce this legislation today, since President Reagan worked tirelessly to end the Cold War and liberate millions of people, and we see the same dedication today to free the people of Iraq. President Reagan spoke about the threat of Saddam Hussein, and asked, ''will we be ready to respond?'' He went on to answer this question by saying, ''In the end, it all comes down to leadership. This is what this country is looking for now. It was leadership here at home that gave us strong American influence abroad and the collapse of imperial communism. Great nations have responsibilities to lead and we should always be cautious of those who would lower our profile because they might just wind up lowering our flag.'' He made these comments not two weeks ago, and not even two months ago. President Reagan, already sensitive to the threat posed by Saddam Hussein, asked this rhetorical question in 1994. This foresight was evident during President Reagan's tenure in the White House. President Reagan played a significant role in framing the modern political landscape, and I am proud to do what I can to commemorate his contribution to America and the world. I can clearly remember President Reagan's visit to Big Sky Country in 1982 for the Centennial celebration for Billings and Yellowstone County. He arrived in the Billings Metra Arena, one of the largest venues in the State, riding in a stagecoach. He embraced the ideals that Montana stood for, and said he was trying to bring a little of it to Washington. I feel much the same way as President Reagan did when he said, ''What we're trying to do in Washington is reawaken the government to the very values that you here in Billings represent—determination, responsibility, confidence, and common sense—the kind of common sense that says if it ain't broke, don't fix it. We are reintroducing the idea that progress is still an American word and that optimism is still an American trait. I believe if we cling to our hopes and dreams, I believe the future will flower just as it did for the founders of Billings, Montana.'' Now more than ever, we need to remember that ''progress'' and ''optimism'' are part of the American vocabulary. The wisdom of President Reagan helped guide us in the right direction, and I am pleased and honored to introduce this legislation today so that we may dedicate a piece of Montana to a great visionary and statesman.

By Mr. SMITH:

S. 868. A bill to amend the Coos, Lower Umpqua, and Siuslaw Restoration Act to provide for the cultural restoration and economic self-sufficiency of the Confederation Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, and for other purposes; to the Committee on Indian Affairs.

Mr. SMITH. Mr. President, I rise today to introduce legislation that will restore to the members of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians a small portion of their ancestral homelands.

The story of these Tribes' experience is well worth hearing. For many of my colleagues, parts of it will sound familiar, as it reflects the history of the early west. In 1850, gold was discovered at a place known as Eight Dollar Bar, near what we now call Cave Junction, OR. Within months thousands of miners with gold fever moved into the area. Indians struggled to protect their land while miners aggressively pursued their vision of the American dream.

In 1855, Joel Palmer, an Indian Agent for the Oregon Territory was sent in by the Federal Government to negotiate treaties with Oregon tribes. Treaties with the tribes of the Rogue River, Umpqua/Cow Creek, and Calapooyas were established, but not the tribes of the central and southern Oregon coast. Much of this land is now in the Siuslaw National Forest.

The Coos, Lower Umpqua and Siuslaw Indians were not a warring people. They were prepared to share their ancestral homelands, which approximated about 1.6 million acres in the coast mountain range, living on a small portion of the land and receiving compensation for the balance. In 1855 and in good faith the tribes signed the Empire Treaty with the Federal Government. But, somewhere between Empire, Oregon and the floor of the U.S. Senate the treaty was lost. No land was allotted for their reservation and no compensation given.

In 1856 the Rogue River War began and the Coos, Lower Umpqua and Siuslaw Indians were marched north and held prisoner in what was called the Coast Reservation. They were held against their will until the mid-1870s. It was during this dark period in their history that over half their population died.

With their release, tribal members returned to their homelands, only to find they had neither land nor resources left. At this point, the three tribes formed a Confederation. In 1954, by Presidential order the Confederation's tribal status was terminated. These decades were difficult ones for members of this Tribe. Lack of education and economic opportunities in the area, and racism by some of their white neighbors took a heavy toll.

In 1984, the Oregon congressional delegation sought and achieved federal recognition for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. At the same time, no reservation lands were granted to the tribe and no compensation offered. The Tribe received a donation of approximately 6 acres in Empire, Oregon. This is now the site of their tribal hall where services are provided to their members and tribal council meetings and tribal events are held. Small, additional tracts have been purchased over time.

The Indian Self-Determination Act encourages tribes to develop plans to achieve the goals of cultural restoration, economic self-sufficiency and attain the standard of living enjoyed by other citizens of the United States. The Confederated Tribes have been working diligently since 1954 to attain those goals.

An essential component in this effort is the Reservation Plan and Forest Land Restoration Proposal. It will provide a long-term source of revenue and lessen dependence on federal funding to operate Tribal government programs and to provide economic benefits to local communities. The Plan will revitalize Tribal culture by reconnecting Tribal people to their ancestral homelands and it will provide a net benefit to the environment by improving the health of ancestral watersheds.

My staff and I began meeting with Tribal members soon after I was first elected to the Senate. Years of work with local citizens, communities and governments to gain understanding and support for the land restoration proposal have been successful. Hundreds of individual meetings, workshops and open forums have been held by the Tribes. Development of the Reservation Plan and Forest Land Restoration Proposal has led to a clear understanding of what activities can occur on these lands which is reflected in the legislation that I have introduced today.

I am proud to introduce legislation today that will return approximately 63,000 acres of their ancestral homeland to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. These U.S. Forest Service lands encompass a portion of the Siuslaw National Forest. Under the legislation, management of the restored lands would be transferred to the Bureau of Indian Affairs with title held in trust by the Secretary of the Interior for the Confederated Tribes.

These lands contain significant cultural sites: encampments, spiritual and burial sites. My proposal will allow these people to meet their cultural goals, and provide economic and environmental benefits to all of the citizens of the region. The legislation ensures continued public access to these lands for hunting and fishing, recreation and transportation. Applicable

State and Federal laws will be followed. Payments to county governments will not be impacted under this proposal. Timber harvested from this land will be processed domestically by local mills. Twenty percent of the revenues from the land will be reinvested in watershed management activities to restore habitat. These lands contain some significant environmental sites. They will be preserved. These lands are not suitable for nor will the laws allow gaming to occur on them.

Revenue gained from activities on these lands will help meet the self-sufficiency goals of the Confederated Tribes. It will be used to assist seniors through elder housing programs, youth through scholarships, low income housing for those in need and provide health care benefits for all of the Tribal members.

The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw are the only federally recognized tribe in Oregon that has never received any land or compensation for the loss of their homeland from the United States Government. This legislation works to right that wrong, to restore a Tribe, to restore a forest, and to restore a very special relationship between the two.

By Mr. HARKIN (for himself, Ms. SNOWE, Mr. INOUYE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Mr. CORZINE, Mr. BIDEN, Mr. SPECTER, Ms. LANDRIEU, Mr. JOHNSON, Mrs. LINCOLN, Mr. HOLLINGS, Ms. MIKULSKI, Mrs. CLINTON, and Ms. COLLINS):

S. 869. A bill to amend title XVIII of the Social Security Act to provide for enhanced reimbursement under the medicare program for screening and diagnostic mammography services, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President. Today I am introducing legislation, the Assure Access to Mammography Act of 2003, on behalf of myself and my colleagues, Senators SNOWE, INOUYE, GRAHAM of South Carolina, MURRAY, CORZINE, BIDEN, SPECTER, LANDRIEU, JOHNSON, LINCOLN, HOLLINGS, MIKULSKI, CLINTON, and Ms. COLLINS to ensure women have full and timely access to preventive breast cancer screenings. As you know, the earlier a woman is diagnosed with breast cancer, the earlier she can begin to receive treatment and the more likely she will survive.

Unfortunately, due to inadequate reimbursement rates for mammograms, women increasingly are having problems getting the mammograms they need. Across the nation, there have been reports of women waiting up to six months for an appointment for this simple procedure. While mammograms often cost up to $150 to administer, Medicare's reimbursement rate is currently set at about $82, barely over half the actual cost of the procedure. This disparity increasingly makes access a real problem, forcing many private centers to shut down and creating a shortage of providers willing to provide services significantly below cost.

The Assure Access to Mammography Act would reverse this growing and alarming trend by correcting the two primary causes of the problem. First, it would increase Medicare reimbursement to radiologists to a reasonable level to ensure health care providers are reimbursed fairly for mammography services. Second, the bill would increase the number of radiologists by increasing the Graduate Medical Education payments to provide for three additional radiologists in each teaching hospital. Finally, the Assure Access to Mammography Act would provide a MEDPAC study on the Medicare reimbursement structure for gender specific medical procedures so that Congress and CMS have the tools we need to make appropriate health policy decisions.

This is an issue that hits close to home for me. Both of my sisters died of breast cancer, at a time when mammograms were not readily available. While imperfect, mammograms are the best-known way to diagnose breast cancer at an early stage in order to reduce mortality. As our society ages, one million additional women each year are needing regular mammograms. The Assure Access to Mammography Act will provide the resources our health care system needs to guarantee all women access to the mammograms they need to ensure that breast cancer is detected early enough to apply appropriate treatments effectively. I look forward to working with my colleagues to pass this needed bipartisan legislation.

By Mr. BIDEN (for himself, Mr. LUGAR, Mr. KENNEDY, Mr. HAGEL, Mr. DOMENICI, and Mr. FEINGOLD):

S. 871. A bill to provide for global pathogen surveillance and response, to the Committee on Foreign Relations.

Mr. President, I am pleased to re-introduce today the ''Global Pathogen Surveillance Act''.

Last year, this bill passed the Senate by unanimous consent on August 1st, but died when the House of Representatives failed to take timely action.

The Global Pathogen Surveillance Act authorizes $150 million over the next two years to help developing nations improve global disease surveillance.

That will go a long way to prevent and contain both biological weapons attacks, if, God forbid, it happens, and naturally occurring infectious disease outbreaks around the world.

I'm happy to announce that Senators LUGAR, KENNEDY, HAGEL, DOMENICI, and FEINGOLD are joining me in cosponsoring this bill.

The mysterious global outbreak of severe acute respiratory syndrome, or SARS, is an unfortunate reminder of why this bill is so important. We've heard a lot about it. We don't know much about it yet.

We know it's a contagious respiratory illness which apparently originated in the Guangdong province of China last November, has stricken more than 2600 individuals in 17 countries, taking the lives of at least 100 individuals.

The World Health Organization is concerned. They've issued a rare global health alert and discouraged travel to certain nations as authorities struggle to determine the cause of this flu-like illness and what viral or infectious agent is involved.

The WHO has not ruled out bioterrorism as a potential cause for the epidemic, although it is unlikely that a disease with only a 4 to 5 percent mortality would be used.

What's so scary about this outbreak is that doctors and nurses taking care of sick patients have fallen ill themselves; initial tests have not revealed evidence of infection with any previously known virus or bacterial agent; and patients are not being cured by standard treatments, although the vast majority do recover.

How would better disease surveillance have helped in dealing with this kind of crisis?

Experts suspect this epidemic first originated in the Guangdong province in southern China in November, but peaked in early February.

A comprehensive surveillance network might have picked up the unique symptoms of this epidemic earlier . . . might have led to quicker diagnosis and better containment measures.

We would have had a better chance to keep this epidemic contained within China, before the pathogen spread to neighboring nations, and now to Canada and the United States.

Over the last eighteen months, Americans have become all too familiar with the threat of bioterrorism and the army of deadly agents capable of spreading death and disease—anthrax, Ebola, and smallpox are only the most sensational examples.

We've had to strengthen our homeland defenses—not just against terrorists armed with bombs and explosives—but against shadowy figures carrying vials of deadly pathogens.

But all in all, this country is making important advances on the domestic front in bioterrorism defense.

Last year, the President signed into law the Bioterrorism Prevention Act of 2002, a comprehensive domestic initiative co-sponsored by Senators Kennedy and Frist.

In January, the Centers for Disease Control announced an initiative to establish electronic surveillance systems in eight American cities as the cornerstone of an eventual national network.

In Delaware, we're developing the very first, comprehensive, state-wide electronic reporting system for infectious diseases.

It'll serve as a prototype for other states by enabling much earlier detection of infectious disease outbreaks.

But a domestic defense against biological weapons isn't sufficient alone.

Biological weapons are a global threat with no respect for borders. A dangerous pathogen released on another continent can quickly spread to the United States in a matter of days, if not hours.

A terrorist group could launch a biological weapons attacks in Mexico in the expectation that the epidemic would quickly spread to the United States.

A rogue state might experiment with new disease strains in another country, intending later to release them here.

And international trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another.

We should make no mistake: in today's world, all infectious disease epidemics, wherever they occur and whether they are deliberately engineered or are naturally occurring, are a potential threat to all nations, including the United States. Such a threat need not begin in the United States to reach our shores.

For that reason, our response cannot be limited to the United States alone.

Global disease surveillance, a systematic approach to tracking disease outbreaks as they occur and evolve around the world, is essential to any real international response.

Why is disease surveillance so important? A biological weapons attack succeeds partly through the element of surprise.

As Dr. Alan P. Zelicoff of the Sandia National Laboratory testified before the Senate Foreign Relations Committee last spring, early warning of a biological weapons attack can prevent illness and death in all but a small fraction of those infected.

A cluster of flu-like symptoms in a city or region may be dismissed by doctors as just the flu when in fact it may be anthrax, plague, or another biological weapon.

But armed with the knowledge that a suspicious epidemic has emerged, doctors and nurses can examine their patients in a different light and, in many cases, effectively treat them.

Disease surveillance is a fancy phrase for a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses that can quickly alert doctors across a region that a suspicious disease outbreak has occurred.

Epidemiological specialists can then investigate and combat the outbreak.

And if it's a new disease or strain, we can begin to develop treatments that much earlier.

An effective disease surveillance system helps even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring.

Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease.

According to the World Health Organization, thirty new infectious diseases have emerged over the past thirty years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent.

The SARS epidemic is only the most recent such outbreak. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and working communications equipment to circulate information.

Even here, in the most advanced Nation in the world, many States and cities rely on old-fashioned pencil and paper methods of tracking disease patterns.

Thankfully, the comprehensive bioterrorism legislation enacted into law last year is beginning to correct that.

Now, it is vitally important that we extend these initiatives into the international arena.

In 2000, the World Health Organization established the first truly global disease surveillance system, the Global Alert and Response Network, to monitor and track infectious disease outbreaks everywhere.

The WHO has done an impressive job so far with this initiative, working on a shoestring budget. But this global network is only as good as its components—individual nations.

Unfortunately, developing nations—those nations most likely to experience rapid disease outbreaks—simply don't have the trained personnel, the laboratory equipment, or the public health infrastructure to do the job. . . to track evolving disease patterns or detect emerging pathogens.

According to a January 2000 report by the National Intelligence Council, developing nations in Africa and Asia have established only rudimentary systems, if any at all, for disease surveillance, response, and prevention.

The World Health Organization reports that more than 60 percent of laboratory equipment in developing countries is either outdated or non-functioning.

This lack of preparedness can lead to tragic results. In August 1994 in Surat, a city in western India, a surge of complaints about flea infestation and a growing rat population was followed by a cluster of reports about patients exhibiting the symptoms of pneumonic plague.

But authorities were unable to connect the dots and warn people until the plague had spread to seven states across India, ultimately killing 56 people and costing the Indian economy $600 million.

Had the Indian authorities possessed better surveillance tools, they may well have contained the epidemic, limited the loss of life, and avoided the panic that led to economically disastrous embargoes on trade and travel.

Thanks to improved surveillance, an outbreak of pneumonic plague in India last year was detected more quickly and contained with only few deaths—with no costly panic.

In short, developing nations are the weak links in any comprehensive global disease surveillance network.

Unless we take action to shore up their capabilities to detect and contain disease outbreaks, we leave the entire world vulnerable to a deliberate biological weapons attack or a virulent natural epidemic.

It's for these reasons that I'm reintroducing the Global Pathogen Surveillance Act. This bill will authorize $150 million in FY 2004 and FY 2005 to strengthen the disease surveillance capabilities of developing nations.

First, the bill seeks to ensure in developing nations a greater number of personnel trained in basic epidemiological techniques.

It offers enhances in-country training for medical and laboratory personnel and the opportunity for select personnel to come to the United States to receive training in our Centers for Disease Control laboratories and Master of Public Health programs in American universities.

Second, it provides assistance to developing nations to acquire basic laboratory equipment, including items as basic as microscopes, so they can quickly diagnose pathogens.

Third, it enables developing nations to obtain communications equipment to quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO.

Again, we're not talking about fancy high-tech equipment, but basics like fax machines and internet-equipped computers.

Finally—to create a real incentive for nations to promptly report suspicious disease outbreaks and offer international health authorities prompt access—the bill gives preference to those countries that agree to let international health experts investigate any suspicious disease outbreaks.

If passed, the Global Pathogen Surveillance Act will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO's global network.

It's an inexpensive and common sense solution to a problem of global proportions—the dual threat of biological weapons and naturally occurring infectious diseases.

Make no mistake—this bill will contribute to our homeland security. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.

In a report released only last month on global infectious disease, the National Academies' Institute of Medicine said, ''The United States should

take a leadership role in promoting the implementation of a comprehensive system of surveillance for global infectious diseases that builds on the current global capacity of infectious disease monitoring.'' By introducing this bill, I hope that our nation can begin to assume that mantle of leadership in this critical area.

Let me close with an excerpt of testimony from a Foreign Relations Committee hearing held on September 5, 2001. Dr. D.A. Henderson, the man who spearheaded the successful international campaign to eradicate smallpox in the 1970's, most recently served as the principal advisor to Secretary of Health and Human Services Tommy Thompson in organizing the nation's defenses against bioterrorism.

Dr. Henderson, who at the time of the hearing was a private citizen, was very clear on the value of global disease surveillance: ''In cooperation with the WHO and other countries, we need to strengthen greatly our intelligence gathering capability.

A focus on international surveillance and on scientist-to-scientist communication will be necessary if we are to have an early warning about the possible development and production of biological weapons by rogue nations or groups.''

Dr. Henderson is exactly right. We cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security.

I ask unanimous consent that the text of the ''Global Pathogen Surveillance Act'' be printed in the RECORD.

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

S. 871

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 ''Global Pathogen Surveillance Act of 2003''.

SEC. 2. FINDINGS; PURPOSE.

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

(1) Bioterrorism poses a grave national security threat to the United States. The insidious nature of the threat, the likely delayed recognition in the event of an attack, and the underpreparedness of the domestic public health infrastructure may produce catastrophic consequences following a biological weapons attack upon the United States.

(2) A contagious pathogen engineered as a biological weapon and developed, tested, produced, or released in another country can quickly spread to the United States. Given the realities of international travel, trade, and migration patterns, a dangerous pathogen released anywhere in the world can spread to United States territory in a matter of days, before any effective quarantine or isolation measures can be implemented.

(3) To effectively combat bioterrorism and ensure that the United States is fully prepared to prevent, diagnose, and contain a biological weapons attack, measures to strengthen the domestic public health infrastructure and improve domestic surveillance and monitoring, while absolutely essential, are not sufficient.

(4) The United States should enhance cooperation with the World Health Organization, regional health organizations, and individual countries, including data sharing with appropriate United States departments and agencies, to help detect and quickly contain infectious disease outbreaks or bioterrorism agents before they can spread.

(5) The World Health Organization (WHO) has done an impressive job in monitoring infectious disease outbreaks around the world, including the recent emergence of the Severe Acute Respiratory Syndrome (SARS) epidemic, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response network.

(6) The capabilities of the World Health Organization are inherently limited by the quality of the data and information it receives from member countries, the narrow range of diseases (plague, cholera, and yellow fever) upon which its disease surveillance and monitoring is based, and the consensus process it uses to add new diseases to the list. Developing countries in particular often cannot devote the necessary resources to build and maintain public health infrastructures.

(7) In particular, developing countries could benefit from—

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for diagnosis of pathogens;

(C) disease reporting is based on symptoms and signs (known as ''syndrome surveillance''), enabling the earliest possible opportunity to conduct an effective response;

(D) a narrowing of the existing technology gap in syndrome surveillance capabilities and real-time information dissemination to public health officials; and

(E) appropriate communications equipment and information technology to efficiently transmit information and data within national and regional health networks, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telephone-based systems for early recognition and diagnosis of diseases.

(8) An effective international capability to monitor and quickly diagnose infectious disease outbreaks will offer dividends not only in the event of biological weapons development, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter terrorist use of biological weapons, as early detection will help mitigate the intended effects of such malevolent uses.

(b) PURPOSE.—The purposes of this Act are as follows:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and appropriate data sharing, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(2) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based and other electronic syndrome surveillance systems, in addition to traditional epidemiology methods, so that they may better detect, diagnose, and contain infectious disease outbreaks, especially those due to pathogens most likely to be used in a biological weapons attack.

(3) To provide assistance to developing countries to purchase appropriate public health laboratory equipment necessary for infectious disease surveillance and diagnosis.

(4) To provide assistance to developing countries to purchase appropriate communications equipment and information technology, including, as appropriate, relevant computer equipment, Internet connectivity mechanisms, and telephone-based applications to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis.

(5) To make available greater numbers of United States Government public health professionals to international health organizations, regional health networks, and United States diplomatic missions where appropriate.

(6) To establish ''lab-to-lab'' cooperative relationships between United States public health laboratories and established foreign counterparts.

(7) To expand the training and outreach activities of overseas United States laboratories, including Centers for Disease Control and Prevention and Department of Defense entities, to enhance the disease surveillance capabilities of developing countries.

(8) To provide appropriate technical assistance to existing regional health networks and, where appropriate, seed money for new regional networks.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE DEVELOPING COUNTRY.—The term ''eligible developing country'' means any developing country that—

(A) has agreed to the objective of fully complying with requirements of the World Health Organization on reporting public health information on outbreaks of infectious diseases;

(B) has not been determined by the Secretary, for purposes of section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a state party to the Biological Weapons Convention.

(2) ELIGIBLE NATIONAL.—The term ''eligible national'' means any citizen or national of an eligible developing country who is eligible to receive a visa under the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) INTERNATIONAL HEALTH ORGANIZATION.—The term ''international health organization'' includes the World Health Organization and the Pan American Health Organization.

(4) LABORATORY.—The term ''laboratory'' means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) SECRETARY.—Unless otherwise provided, the term ''Secretary'' means the Secretary of State.

(6) SELECT AGENT.—The term ''select agent'' has the meaning given such term for purposes of section 72.6 of title 42, Code of Federal Regulations.

(7) SYNDROME SURVEILLANCE.—The term ''syndrome surveillance'' means the recording of symptoms (patient complaints) and signs (derived from physical examination) combined with simple geographic locators to track the emergence of a disease in a population.

SEC. 4. PRIORITY FOR CERTAIN COUNTRIES.

Priority in the provision of United States assistance for eligible developing countries under all the provisions of this Act shall be given to those countries that permit personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases on their territories, provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies in addition to international health organizations.

SEC. 5. RESTRICTION.

Notwithstanding any other provision of this Act, no foreign nationals participating in programs authorized under this Act shall have access, during the course of such participation, to select agents that may be used as, or in, a biological weapon, except in a supervised and controlled setting.

SEC. 6. FELLOWSHIP PROGRAM.

(a) ESTABLISHMENT.—There is established a fellowship program (in this section referred to as the ''program'') under which the Secretary, in consultation with the Secretary of Health and Human Services, and, subject to the availability of appropriations, award fellowships to eligible nationals to pursue public health education or training, as follows:

(1) MASTER OF PUBLIC HEALTH DEGREE.—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States with a Center for Public Health Preparedness, as determined by the Centers for Disease Control and Prevention.

(2) ADVANCED PUBLIC HEALTH EPIDEMIOLOGY TRAINING.—Advanced public health training in epidemiology to be carried out at the Centers for Disease Control and Prevention (or equivalent State facility), or other Federal facility (excluding the Department of Defense or United States National Laboratories), for a period of not less than 6 months or more than 12 months.

(b) SPECIALIZATION IN BIOTERRORISM.—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a ''fellow'') may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) FELLOWSHIP AGREEMENT.—

(1) IN GENERAL.—In awarding a fellowship under the program, the Secretary, in consultation with the Secretary of Health and Human Services, shall require the recipient to enter into an agreement under which, in exchange for such assistance, the recipient—

(A) will maintain satisfactory academic progress (as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary from the institution providing the education or training on the progress of the recipient's education or training);

(B) will, upon completion of such education or training, return to the recipient's country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least four years of employment in a public health position in the government or a nongovernmental, not-for-profit entity in that country or, with the approval of the Secretary in an international health organization; and

(C) agrees that, if the recipient is unable to meet the requirements described in subparagraph (A) or (B), the recipient will reimburse the United States for the value of the assistance provided to the recipient under the fellowship, together with interest at a rate determined in accordance with regulations issued by the Secretary but not higher than the rate generally applied in connection with other Federal loans.

(2) WAIVERS.—The Secretary may waive the application of paragraph (1)(B) and (1)(C) if the Secretary determines that it is in the national interest of the United States to do so.

(d) IMPLEMENTATION.—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to enter into an agreement with any eligible developing country under which the country agrees—

(1) to establish a procedure for the nomination of eligible nationals for fellowships under this section;

(2) to guarantee that a fellow will be offered a professional public health position within the country upon completion of his studies; and

(3) to certify to the Secretary when a fellow has concluded the minimum period of employment in a public health position required by the fellowship agreement, with an explanation of how the requirement was met.

(e) PARTICIPATION OF UNITED STATES CITIZENS.—On a case-by-case basis, the Secretary may provide for the participation of United States citizens under the provisions of this section if the Secretary determines that it is in the national interest of the United States to do so. Upon completion of such education or training, a United States recipient shall complete at least five years of employment in a public health position in an eligible developing country or the World Health Organization.

SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND SYNDROME SURVEILLANCE.

(a) IN GENERAL.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, support short training courses in-country (not in the United States) to laboratory technicians and other public health personnel from eligible developing countries in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks. Training under this section may be conducted in overseas facilities of the Centers for Disease Control and Prevention or in Overseas Medical Research Units of the Department of Defense, as appropriate. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

(b) TRAINING IN SYNDROME SURVEILLANCE.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, establish and support short training courses in-country (not in the United States) for public health personnel from eligible developing countries in techniques of syndrome surveillance reporting and rapid analysis of syndrome information using Geographic Information System (GIS) and other Internet-based tools. Training under this subsection may be conducted via the Internet or in appropriate facilities as determined by the Secretary. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT.

(a) AUTHORIZATION.—The President is authorized, on such terms and conditions as the President may determine, to furnish assistance to eligible developing countries to purchase and maintain public health laboratory equipment described in subsection (b).

(b) EQUIPMENT COVERED.—Equipment described in this subsection is equipment that is—

(1) appropriate, where possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or may be used as a biological weapon;

(3) compatible with general standards set forth, as appropriate, by the World Health Organization and the Centers for Disease Control and Prevention, to ensure interoperability with regional and international public health networks; and

(4) not defense articles or defense services as those terms are defined under section 47 of the Arms Export Control Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, maintain, support, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 9. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION.

(a) ASSISTANCE FOR PURCHASE OF COMMUNICATION EQUIPMENT AND INFORMATION TECHNOLOGY.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries for the purchase and maintenance of communications equipment and information technology described in subsection (b), and supporting equipment, necessary to effectively collect, analyze, and transmit public health information.

(b) COVERED EQUIPMENT.—Equipment (and information technology) described in this subsection is equipment that—

(1) is suitable for use under the particular conditions of the area of intended use;

(2) meets appropriate World Health Organization standards to ensure interoperability with like equipment of other countries and international health organizations; and

(3) is not defense articles or defense services as those terms are defined under section 47 of the Arms Export Control Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) ASSISTANCE FOR STANDARDIZATION OF REPORTING.—The President is authorized to provide, on such terms and conditions as the

President may determine, technical assistance and grant assistance to international health organizations to facilitate standardization in the reporting of public health information between and among developing countries and international health organizations.

(f) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, support, maintain, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS.

(a) IN GENERAL.—Upon the request of a United States chief of diplomatic mission or an international health organization, and with the concurrence of the Secretary of State, the head of a Federal agency may assign to the respective United States mission or organization any officer or employee of the agency occupying a public health position within the agency for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) REIMBURSEMENT.—The costs incurred by a Federal agency by reason of the detail of personnel under subsection (a) may be reimbursed to that agency out of the applicable appropriations account of the Department of State if the Secretary determines that the relevant agency may otherwise be unable to assign such personnel on a non-reimbursable basis.

SEC. 11. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.

(a) IN GENERAL.—Subject to the availability of appropriations, the Centers for Disease Control and Prevention and the Department of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers or the Department, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of those laboratories, especially with respect to the implementation of on-site training of foreign nationals and regional outreach efforts involving neighboring countries.

(b) COOPERATION AND COORDINATION BETWEEN LABORATORIES.—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.

(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of overseas laboratories of the Centers or the Department under this section shall not—

(1) detract from the established core missions of the laboratories; or

(2) compromise the security of those laboratories, as well as their research, equipment, expertise, and materials.

SEC. 12. ASSISTANCE FOR REGIONAL HEALTH NETWORKS AND EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

(1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing regional health networks; and

(2) developing new regional health networks.

(b) EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional Foreign Epidemiology Training Programs in eligible developing countries.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to subsection (c), there are authorized to be appropriated $70,000,000 for the fiscal year 2004 and $80,000,000 for fiscal year 2005, to carry out this Act.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

(A) $50,000,000 for the fiscal year 2004 and $50,000,000 for the fiscal year 2005 are authorized to be available to carry out sections 6, 7, 8, and 9;

(B) $2,000,000 for the fiscal year 2004 and $2,000,000 for the fiscal year 2005 are authorized to be available to carry out section 10;

(C) $8,000,000 for the fiscal year 2004 and $18,000,000 for the fiscal year 2005 are authorized to be available to carry out section 11; and

(D) $10,000,000 for the fiscal year 2004 and $10,000,000 for the fiscal year 2005 are authorized to be available to carry out section 12.

(b) AVAILABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) REPORTING REQUIREMENT.—

(1) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, containing—

(A) a description of the implementation of programs under this Act; and

(B) an estimate of the level of funding required to carry out those programs at a sufficient level.

(2) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under paragraph (1).

By Mr. BINGAMAN:

S. 873. A bill to authorize funding for catalysis science and engineering research and development at the Department of Energy for fiscal years 2004 through 2009; and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill entitled the Department of Energy Catalysis Research and Development Act.

Catalysis is at the heart of fuels production in the petroleum and chemical industries. Catalytic converters help reduce emissions of cars. Catalysis can help reduce carbon dioxide from industrial plants, which can contribute to global warming. The science of catalysis can help our pharmaceutical industry by one day mimicking nature's enzymes which are nature's catalysts. The industries I just mentioned contribute $500 billion to our gross national product; they all rely on catalysis to produce new compounds as efficiently as possible.

The catalysis science program is one of the hidden gems at the Department of Energy's Office of Science. The Department supports over 60 percent of the catalysis research in the Federal Government. I feel it is important that our energy bill highlights its basic research, and recommends a steady increase in funding levels for it.

The bill seeks to help the Department meet what it called the ''grand challenge'' in catalytic chemistry. The ''grand challenge'' which this bill seeks to address is first, the ability to design, at the atom level, catalytic structures to control ''catalytic activity'', or the rate at which a chemical reaction proceeds. The second part of this ''grand challenge'' is to control the ''selectivity'' of a catalytic reaction, or the ability of a catalytic compound to precisely seek out other chemicals through which to start a reaction. To achieve this ''grand challenge'', this bill directs the Department to design new catalytic compounds using the latest advancements in scientific computing. Today's computers are rapidly approaching a point where we can model a chemical reaction by simulating its atom level constituents. This bill directs the Department to utilize its state-of-the-art diagnostic equipment at its national laboratories and universities to analyze catalytic reactions in real time, and at the atomic level. These diagnostics will be used to validate computational models being developed in the advanced scientific computing program. This bill directs the Department to use the emerging field of nanoscience to tailor new catalytic compounds atom by atom, so as to accelerate reactions to produce clean fuels at rates that far exceed what we know today. In that regard, I expect the Department to utilize its nanoscience facilities to help design these new compounds. If we are successful in meeting this grand challenge, we will bring fuels to market quicker to meet increasing energy demands, while using less overall energy to produce them.

Finally, the bill directs the Secretary fund these efforts in multidisciplinary teams including computer scientists, chemists, biochemists, materials scientists and physicists. It requires the Department to transfer its catalysis research to industry so that they can bring to market the full fruits of our Government's advanced energy research in the shortest time possible.

We are currently debating an energy bill in the Energy and Natural Resources Committee. We plan to shortly mark up the research and development section, and, I think it is vitally important that this section address the topic of catalysis to produce future fuels for our Nation.

Mr. President, 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. 873

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 ''Department of Energy Catalysis Research and Development Act''.

SEC. 2. FINDINGS.

The Congress finds that catalysis science is critical to the production of fuels for energy generation, the reduction of toxic waste streams, and the development of compounds to reduce global warming.

SEC. 3. DEPARTMENT OF ENERGY PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, through the Director of the Office of Science of the Department of Energy, shall establish a program of research and development in catalysis science consistent with the Secretary's statutory authorities related to research and development.

(b) SCOPE OF THE PROGRAM.—The program shall include efforts to—

(1) enable catalyst design using—

(i) combined experimental and mechanistic methodologies, and

(ii) computational modeling of catalytic reactions at the molecular level;

(2) develop techniques for—

(i) high throughout synthesis of catalysts and novel assays for rapid throughout catalyst testing of small quantities of catalysts on diverse processes,

(ii) reducing the analytical cycle time by parallel operation and automation,

(iii) characterizing catalysts at the 0.1 to 2 nanometer scale, and

(iv) characterizing catalysts in-situ under actual operating conditions at high temperature and pressure,

(3) synthesize catalysts with specific site architecture,

(4) conduct research in the use of precious metals for catalysis (excluding platinum, palladium, and rhodium),

(5) translate molecular (picoscale) and nanoscale fundamentals to the design of catalytic compounds.

(c) DUTIES OF THE DIRECTOR OF THE OFFICE OF SCIENCE.—In carrying out the program under this Act, the Director of the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators that include teams drawing upon the expertise of homogeneous, heterogeneous, and biocatalytic investigators to pioneer new approaches in catalytic design;

(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators conducting research and development in catalysis science in collaboration with national user facilities such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other federal agencies.

(d) MERIT REVIEW REQUIRED.— All grants, contracts, cooperative agreements, or other financial assistance awards under this Act shall be made only after independent merit review.

(e) TRIENNAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every three years to report on gains made in the fundamental science of catalysis and its progress made towards developing new fuels for energy production, material fabrication processes and methods to reduce global warming.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

The following sums are authorized to be appropriated to the Secretary of Energy, to remain available until expended, for the purposes of carrying out this Act:

(1) $33,000,000 for fiscal year 2004.
(2) $35,000,000 for fiscal year 2005.
(3) $36,500,000 for fiscal year 2006.
(4) $38,200,000 for fiscal year 2007.
(5) $40,100,000 for fiscal year 2008.
(6) $42,100,000 for fiscal year 2009.

By Mr. TALENT (for himself, Mr. SCHUMER, and Mr. GRAHAM of South Carolina):

S. 874. A bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes; to the Committee on Finance.

Mr. TALENT. Mr. President, today I rise on behalf of myself and my colleagues, Senators CHARLES SCHUMER and LINDSEY GRAHAM, in support of the Sickle Cell Treatment Act of 2003, which will help hundreds of thousands of people who suffer from Sickle Cell Disease. SCD, a genetic disease that affects red blood cells. This bill has bipartisan and bicameral support, as Representatives DANNY K. DAVIS, a Democrat, and RICHARD BURR, a Republican, will introduce the companion bill today.

Sickle Cell Disease is an inherited blood disorder that is a major health problem in the United States, primarily affecting African Americans. People with sickle cell disease have red blood cells that contain an abnormal type of hemoglobin. Sometimes these red blood cells become sickle-shaped—crescent shaped—and have difficulty passing through small blood vessels. When sickle-shaped cells block small blood vessels, less blood can reach that part of the body. Tissue that does not receive a normal blood flow eventually becomes damaged. This is what essentially causes the potentially life-threatening complications of sickle cell disease. There is currently no cure.

More than 2,500,000 Americans, mostly African Americans, have the sickle cell trait. Among newborn American infants, SCD occurs in approximately 1, in 300 African Americans. The most feared complication for children with SCD is a stroke, which may affect infants as young as 18 months of age. While some patients can remain without symptoms for years, many others may not survive infancy or early childhood.

Many adults with SCD have severe physical problems, such as acute lung complications that can result in death. Adults with SCD can also develop chronic problems, including pulmonary disease, pulmonary hypertension, and kidney failure. The average life span for an adult with SCD is the mid-40s. Stroke in the adult SCD population commonly results in both mental and physical disabilities for life.

The Sickle Cell Treatment Act of 2003 helps combat SCD by providing Federal matching funds for SCD-related services under Medicaid, and by allowing States to receive a Federal 50–50 match for nonmedical expenses related to SCD treatment such as genetic counseling. This bill also authorizes a grant program in the amount of $10 million per year for 5 years to fund 40 health centers nationwide. Although I will go into detail about the bill, its focus is to encourage States to partner with SCD providers, who have historically been on the frontlines of this issue, to treat and find a cure for SCD patients.

With regard to the Federal matching funds, this bill allows states to reimburse SCD services beyond current Medicaid law, which only covers physician and laboratory services. For example, if a State wanted to increase reimbursement rates for SCD blood transfusions, it could do so through rate setting for the new SCD benefit without having to increase reimbursement for all Medicaid blood transfusions, therefore, making it easier for a State to reimburse at a higher rate for SCD-related treatment.

The bill also provides Federal reimbursement for education and other services related to the prevention and treatment of SCD. This will allow States to get a Federal 50-50 match for nonmedical, administrative expenses to include outreach and genetic counseling about SCD and its treatment for SCD patients of any age. This is critical to helping this historically underserved population, many of who may not know about SCD or its symptoms until it is too late.

This bill also allows hospitals and clinics to do outreach with non-medical personnel to educate high-risk communities about recognizing SCD. It would also allow nonmedical personnel like counselors to spend time with SCD families to discuss how to manage the disease. Providing this one-stop shop will centralize SCD-related treatment and counseling services to better serve those with SCD.

In addition to the diagnosis and treatment components, this bill creates a grant program for 40 health centers nationally. Specifically, the U.S. Department of Health and Human Services is authorized to distribute grants to up to 40 eligible health centers nationwide for $5 million for the next 5 fiscal years. Grants may be used for purposes including the education, treatment—i.e., genetic counseling and testing—and continuity of care for individuals with SCD, for training health professionals, and to identify and secure additional Federal funds to continue SCD treatment.

This bill also creates a National Coordinating Center to collect, monitor and distribute information on new and innovative practices to prevent and treat SCD, establish a model protocol for the grant recipients to follow as a quality control mechanism, develop educational materials regarding the prevention and treatment of SCD, and submit a report to Congress to ensure fiscal accountability and provide information of recent developments towards a cure for SCD.

The Sickle Cell Treatment Act of 2003 provides tremendous benefits to States. The approach taken in this bill is to add services related to SCD to the list of services covered by Medicaid for those people who are eligible for Medicaid under current eligibility rules.

For example, the bill allows States to use Medicaid funds to work with providers to better serve areas with a high prevalence of SCD in fields such as education and counseling,which are currently not reimbursed by Medicaid. This bill also allows the States to create opportunities to partner with providers to determine ''best practices'' to encourage the most effective and efficient use of medical resources toward SCD treatment and education.

In introducing the Sickle Cell Treatment Act of 2003, we are trying to help thousands of Americans who live with this disease. This legislation will provide many of these patients with access to the essential treatments that they need. It has the support of many important groups representing the SCD, African-American and children's health care communities as well as the providers and researchers who are working to treat and find a cure for this disease. For example, Allan Platt, Program Coordinator, The Georgia Comprehensive Sickle Cell Center at Grady Health System in Atlanta, GA has written me the following letter, which states in part, ''You did a wonderful thing for sickle cell patients and for those who are caring for them. Let us know how we can rally support for this.''

I want to offer my appreciation to the Sickle Cell Disease Association of American Inc., SCDAA, for its vigilant efforts to help find a cure for SCD, and working with my office to help craft this critical piece of legislation. SCDAA President and Chief Operating Officer, Lynda K. Anderson, has provided tireless support on behalf of this effort. Also I would like to acknowledge the efforts of SCDAA Board Member Michael R. DeBaun, M.D., M.P.H, Assistant Professor of Pediatrics and Biostatistics at the Washington University School of Medicine in St. Louis, MO. Lynda and Michael have brought the issues addressed in this bill to my attention and helped to bring the introduction of this bill to fruition.

The SCDAA was founded in 1971 to provide an effective coordinated community-based approach to developing and implementing strategies to resolve issues surrounding sickle cell disease. Through three decades, SCDAA and its member organizations have demonstrated how community-based organizations and comprehensive health and research centers can work with local, State and Federal agencies in furtherance of national health care objectives. To this day, SCDAA continues to pursue legislative initiatives to secure additional government funding for research and community-based services. Moreover, it has demonstrated its capacity to provide continued leadership in this area as a potential national coordinator center, and I look forward to the organization applying for such a designation, once this measure has been enacted into law. My colleagues and I on both sides of the aisle and in both legislative bodies look forward to working with SCDAA to fight this good fight and to secure the resources required to address the very unique needs of patients, families and communities affected by SCD.

I ask that my colleagues in the Senate join Senators SCHUMER and GRAHAM, and Representatives DAVIS and BURR in helping us to find a cure to help the approximately 70,000 Americans who have SCD and the approximately 1,800 American babies who are born with this disease each year in supporting the Sickle Cell Treatment Act of 2003.

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

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

S. 874

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sickle Cell Treatment Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Sickle Cell Disease (in this section referred to as ''SCD'') is an inherited disease of red blood cells that is a major health problem in the United States.

(2) Approximately 70,000 Americans have SCD and approximately 1,800 American babies are born with the disease each year. SCD also is a global problem with close to 300,000 babies born annually with the disease.

(3) In the United States, SCD is most common in African-Americans and in those of Hispanic, Mediterranean, and Middle Eastern ancestry. Among newborn American infants, SCD occurs in approximately 1 in 300 African-Americans, 1 in 36,000 Hispanics, and 1 in 80,000 Caucasians.

(4) More than 2,500,000 Americans, mostly African-Americans, have the sickle cell trait. These Americans are healthy carriers of the sickle cell gene who have inherited the normal hemoglobin gene from 1 parent and the sickle gene from the other parent. A sickle cell trait is not a disease, but when both parents have the sickle cell trait, there is a 1 in 4 chance with each pregnancy that the child will be born with SCD.

(5) Children with SCD may exhibit frequent pain episodes, entrapment of blood within the spleen, severe anemia, acute lung complications, and priapism. During episodes of severe pain, spleen enlargement, or acute lung complications, life threatening complications can develop rapidly. Children with SCD are also at risk for septicemia, meningitis, and stroke. Children with SCD at highest risk for stroke can be identified and, thus, treated early with regular blood transfusions for stroke prevention.

(6) The most feared complication for children with SCD is a stroke (either overt or silent) occurring in 30 percent of the children with sickle cell anemia prior to their 18th birthday and occurring in infants as young as 18 months of age. Students with SCD and silent strokes may not have any physical signs of such disease or strokes but may have a lower educational attainment when compared to children with SCD and no strokes. Approximately 60 percent of students with silent strokes have difficulty in school, require special education, or both.

(7) Many adults with SCD have acute problems, such as frequent pain episodes and acute lung complications that can result in death. Adults with SCD can also develop chronic problems, including pulmonary disease, pulmonary hypertension, degenerative changes in the shoulder and hip joints, poor vision, and kidney failure.

(8) The average life span for an adult with SCD is the mid-40s. While some patients can remain without symptoms for years, many others may not survive infancy or early childhood. Causes of death include bacterial infection, stroke, and lung, kidney, heart, or liver failure. Bacterial infections and lung injuries are leading causes of death in children and adults with SCD.

(9) As a complex disorder with multisystem manifestations, SCD requires specialized comprehensive and continuous care to achieve the best possible outcome. Newborn screening, genetic counseling, and education of patients and family members are critical preventative measures that decrease morbidity and mortality, delaying or preventing complications, in-patient hospital stays, and increased overall costs of care.

(10) Stroke in the adult SCD population commonly results in both mental and physical disabilities for life.

(11) Currently, one of the most effective treatments to prevent or treat an overt stroke or a silent stroke for a child with SCD is at least monthly blood transfusions throughout childhood for many, and throughout life for some, requiring removal of sickle blood and replacement with normal blood.

(12) With acute lung complications, transfusions are usually required and are often the only therapy demonstrated to prevent premature death.

SEC. 3. INCLUSION OF PRIMARY AND SECONDARY PREVENTATIVE MEDICAL STRATEGIES FOR CHILDREN AND ADULTS WITH SICKLE CELL DISEASE AS MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in subsection (a)—

(A) by striking ''and'' at the end of paragraph (26);

(B) by redesignating paragraph (27) as paragraph (28); and

(C) by inserting after paragraph (26), the following:

''(27) subject to subsection (x), primary and secondary preventative medical strategies, including prophylaxes, and treatment and services for individuals who have Sickle Cell Disease; and''; and

(2) by adding at the end the following:

''(x) For purposes of subsection (a)(27), the strategies, treatment, and services described in that subsection include the following:

''(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

''(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait.

''(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.''.

(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND OTHER SERVICES RELATED TO THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (D), by striking ''plus'' at the end and inserting ''and''; and

(2) by adding at the end the following:

''(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

''(i) services to identify and educate individuals who have Sickle Cell Disease or who

are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

''(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who have Sickle Cell Disease; plus''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

SEC. 4. DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.

(a) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(A) the coordination of service delivery for individuals with Sickle Cell Disease;

(B) genetic counseling and testing;

(C) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(D) training of health professionals; and

(E) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

(2) GRANT AWARD REQUIREMENTS.—

(A) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section to eligible entities located in different regions of the United States.

(B) PRIORITY.—In awarding grants under this section, the Administrator shall give priority to awarding grants to eligible entities that are—

(i) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

(ii) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(b) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this section shall use funds made available under the grant to carry out, in addition to the activities described in subsection (a)(1), the following activities:

(1) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

(A) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

(B) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

(C) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

(2) To train nursing and other health staff who specialize in pediatrics, obstetrics, internal medicine, or family practice to provide health care and genetic counseling for individuals with the sickle cell trait.

(3) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

(4) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease, including the genetic testing of parents or other appropriate relatives of children with Sickle Cell Disease and of adults with Sickle Cell Disease.

(c) NATIONAL COORDINATING CENTER.—

(1) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this section.

(2) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

(A) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(B) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(C) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(D) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this section and such direct outcome measures as—

(i) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(ii) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

(d) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

(e) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Health Resources and Services Administration.

(2) ELIGIBLE ENTITY.—The term ''eligible entity'' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(A) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(B) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in subparagraph (A), or the experts described in subsection (b)(3), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

(3) FEDERALLY-QUALIFIED HEALTH CENTER.—The term ''Federally-qualified health center'' has the meaning given that term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for each of fiscal years 2004 through 2009.

By Mr. KERRY (for himself, Mr. SANTORUM, Mr. SARBANES, Mr. ALLARD, Mr. DASCHLE, Mr. KENNEDY, Ms. STABENOW, and Mrs. CLINTON):

S. 875. A bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes; to the Committee on Finance.

• Mr. KERRY. Mr. President, owning your own home is the foundation of the American dream. It encourages personal responsibility, improves child development, provides economic security and gives families a greater stake in the development of their communities. Communities where homeownership rates are highest have lower crime rates, better schools and provide a better quality of life for families to raise their children.

However, too many low- and moderate-income families living in urban and rural areas across our nation have not been able to share in the dream and benefits of homeownership due to the lack of available housing or the high cost of what housing is available.

Today, I am introducing the Community Development Homeownership Tax Credit Act, along with Senators SANTORUM, SARBANES, ALLARD, DASCHLE, KENNEDY, STABENOW and CLINTON to encourage the construction and substantial rehabilitation of 500,000 homes over the next ten years for low- and moderate-income families in economically distressed areas.

The bill will increase the supply of affordable homes for sale in inner-cities, rural areas and low- and moderate-income neighborhoods across the United States. It will bridge the gap that exists today between the cost of developing-affordable housing and the price at which these homes can be sold in many low-income neighborhoods by providing investors with a tax credit of up to 50 percent of the cost of home construction or rehabilitation.

By facing the mounting challenge of producing affordable housing, I strongly believe we can help provide critically needed economic development low- and moderate-income communities across our country and provide an important stimulus in the development of our nation's economy. The production of new homes provided in this legislation will create both construction and construction-related jobs which will both increase economic growth and lower the unemployment rate. New Economic activity can revitalize many inner-city neighborhoods and rural areas where unemployment and crime have been a fact of life for too long.

Buying a new home also leads to the purchase of new appliances and furnishings. Average new homebuyers spend almost $5,000 on appliances and

furnishings during the first year of living in their new home. This will help stimulate the manufacturing section of our economy. It is clear that building new homes creates jobs and moves our economy forward.

Over the past decade, we have made substantial progress in increasing the homeownership rate in the United States. In 2000, the U.S. homeownership rate reached a record high of 67.1 percent with some 71 million U.S. households owning their own home. However, many working families have been struggling to find an affordable home in our nation's cities. Over the past two generations, many families have moved out of cities and into the suburbs, which has depressed the development of housing in the inner-city. In 1999, the homeownership rate in the central-city areas was 50.4 percent, this is more than 20 percent lower than the suburban homeownership rate of 73.6 percent.

Working families with low- and moderate-income have also had difficulties buying a home. Currently, 83.3 percent of households with family income higher than the median family income are homeowners, while only 52.4 percent of households with family income below the median income are homeowners.

Too many communities face a lack of available homes because developers are concerned that the new houses may not be sold for the cost of construction. Many properties or sites that could be developed into affordable homes now sit vacant, and neighborhoods remain undeveloped because the gap between development costs and market prices has not been filled. The lack of affordable single-family homes affect many urban and rural areas where a majority of residents earn less than the median income.

Today, too many minority families face barriers in their attempts to reach the American Dream of homeownership. According to Census data for the fourth quarter of 2002, non-Hispanic whites have a 74.8 percent homeownership rate, while minority groups have just a 55.4 percent homeownership rate. African Americans have only a 47.5 percent homeownership rate, and Hispanics have a 49.5 percent homeownership rate in the same study. The gap between white and African American homeownership rates has been approximately 25 percent to 30 percent for most of the last century. These numbers are simply unacceptable.

Despite our efforts at the federal level to promote homeownership, many minorities also face higher than average denial rates for mortgage applications. A recent study by the University of Massachusetts shows that racial and ethnic lending disparities continue in Boston. For example, African Americans were 2.73 times as likely as whites to be denied in their mortgage applications. Latinos were 2.25 times as likely as whites to be denied in their mortgage applications. Finally, Asians were 1.55 times as likely as whites to be denied in their mortgage applications.

Along with a lack of available homes in urban and rural areas, our nation is also facing an affordable rental housing crisis. Thousands of low-income families with children, the disabled, and the elderly are finding it difficult to obtain or afford privately owned affordable rental housing units. Recent changes in the housing market have limited the availability of affordable housing across the country, while the growth in our economy in the last decade has dramatically increased the cost of the housing that remains. Constructing new housing will help many families move out of rental housing and help increase the number of available rental housing units and help ease the affordable housing crisis we now face.

The story of Benjamin and Rita Okafor shows how working families in Massachusetts have great difficulty obtaining a decent home of their own. For many years, the Okafor's and their two young children were forced to live in a one-bedroom apartment. Benjamin Okafor, who worked full time as a cab driver in Boston, spent days and months looking for a bigger apartment for his family. However, the lack of affordable housing in the Boston area made it impossible for him to find anything appropriate. When his wife Rita became pregnant with their third child, the Okafor's knew something had to change in their living situation. Luckily, Ben was accepted into the Habitat for Humanity program and worked 300 sweat equity hours constructing a house. In August 2000, the Okafor family moved into a new home of their own in Dorchester. Ben says that this new home gives them the hope and stability they need. Yet, there are still far too many working families living a substandard housing and many more families that desperately need assistance to become homeowners. A new tax incentive for developers to build affordable homes in distressed areas will help working families like the Okafor's to afford a home for the first time.

The benefits of owning a home can bring families financial rewards and personal satisfaction with a deep sense of security. Real estate values have historically risen over time. Homeowners may deduct mortgage interest and property taxes as an expense against income. Real estate has generally been seen as marketable, allowing for property to be sold at a predictable price to a dependable group of available buyers.

We know that owning a home instead of renting leads to a better quality of life for its residents, but we are now learning more and more about the impact homeownership has on the cognitive and behavioral outcomes for children. A recent study by Ohio State University shows that children of families who own their home have fewer behavioral problems and are able to learn more effectively. Specifically, a child's cognitive abilities are 9 percent higher in math and 7 percent higher in reading for children living in their own homes. The study also shows that these children also experienced up to 3 percent lower behavioral problems than other children. This study proves that the national goal of homeownership has an added benefit of helping America's children learn and behave better, which helps our schools produce better citizens and will help our economy develop in the long term.

The Community Development Tax Credit Act, which I am introducing today, bridges the gap between development costs and market value to enable the development of new or refurbished homes in urban and rural areas to blossom. The tax credit would be available to developers or investors that build or substantially rehabilitate homes for sale to low- or moderate-income buyers in low-income areas. The credit would generate equity investment sufficient to cover the gap between the cost of development and the price at which the home can be sold to an eligible buyer.

The tax credit volume would be limited to $1.75 per capita for each State and allocated by the States themselves. Credits would be claimed over 5 years, starting when homes are sold. I believe this legislation will result in approximately 50,000 homes built or refurbished annually, assuming about $40,000 per home.

The maximum tax credit equals 50 percent of the cost of construction, substantial rehabilitation, and building acquisition. The eligible cost may not exceed the Federal Housing Administration single-family mortgage limits. The minimum rehabilitation costs is $25,000. Eligible building acquisition costs are limited to one-half of rehabilitation costs. States will allocate only the level of tax credits necessary for financial feasibility of individual projects. Ten percent of the available credit will be set aside for nonprofit organizations.

The eligible areas for the tax credit are defined as Census Tracts with median income below 80 percent of the area or state median. Rural areas that are currently eligible for USDA housing programs will be eligible for the tax credit. Indian tribal lands will be eligible for the tax credit. State-identified areas of chronic economic distress will also be eligible for tax credit, subject to disapproval by the Department of Housing and Urban Development.

Those eligible to buy homes built or refurbished using the tax credit include: individuals with incomes up to 80 percent of the area or state median and up to 100 percent of area median income in low-income/high-poverty Census Tracts.

Individual states will write plans to allocate the available tax credits using the following selection criteria: contribution of the development to community stability and revitalization; community and local government support; need for homeownership development in the area; sponsor capability; and the long-term sustainability of the

project as owner-occupied residences. Then individual developers along with investors can apply to the state to be awarded a tax credit for developing a property in a low- or moderate-income area. If chosen by the state, investors can start to claim the tax credit as the homes are sold to eligible buyers. They can continue to claim the tax credit for five years. Investors are not subject to recapture. If the home owner sells the residence within five years, a scale would determine the percentage of the gain that would be recaptured by the Federal Government. In the first two years, 100 percent of the gain and 80, 70 and 60 percent in the third, fourth, and fifth years, respectively, would be recaptured.

The Community Development Homeownership Tax Credit Act that I am introducing today will positively affect the lives for approximately 500,000 families over the next 10 years, help resolve the affordable rental housing crisis we face, and help create jobs and grow our economy. I ask all of my colleagues to help expand the foundation of the American Dream by supporting this new tax incentive to encourage the construction and rehabilitation of homes for low- and moderate-income families in economically distressed areas.

This legislation is supported by the U.S. Conference of Mayors, Fannie Mae, Freddie Mac, the Enterprise Foundation, Local Initiatives Support Coalition, Mortgage Bankers Association of America, National Association of Home Builders, National Low Income Housing Coalition, National Association of Local Housing Finance Agencies, National Association of Realtors, National Council of La Raza, National Hispanic Housing Conference, Habitat for Humanity International and others.●

By Mr. WYDEN (for himself, Ms. COLLINS, and Mrs. CLINTON):

S. 876. A bill to require public disclosure of noncompetitive contracting for the reconstruction of the infrastructure of Iraq, and for other purposes; to the Committee on Governmental Affairs.

Mr. WYDEN. Mr. President, Senators COLLINS, CLINTON, BYRD, LIEBERMAN and I want the rebuilding of Iraq to be done in the best way possible—for the Iraqi people and for the American taxpayers who will foot the bill. To ensure that happens, we're introducing bipartisan legislation today to ensure accountability in the awarding of U.S. contracts to rebuild Iraq.

Usually in situations like this, open and competitive bidding is used to get the best deal for the taxpayers. The same needs to hold true here. Contracts to rebuild Iraq should be awarded in the sunshine—not behind a smokescreen. If the Federal Government chooses not to use free market competition to get the most reasonable price from the most qualified contractor, then, at a minimum, they should have to tell the American people why.

The bill we're introducing today is called the Sunshine in Iraq Reconstruction Contracting Act. It's intended to shine light into the secretive practices the United States Agency for International Development, USAID, and other Federal agencies are using to hand out in Iraqi work.

There are dollars-and-cents reasons for doing this. The potential cost of rebuilding Iraq has been estimated at around $100 billion. That's a lot of taxpayer money. And the U.S. General Accounting Office, GAO, reports that sole-source and limited-source contracts aren't usually the best buy. Investigator found that Army officials often just took whatever level of services the contractor gave, without ever asking if it could be done more efficiently or at a lower cost.

Despite that, sole-source and limited-source contracts look like the rule, not the exception, for rebuilding Iraq. And these are costing some big cash. Contracts awarded for oil fire fighting and other projects are so-called ''cost-plus'' contracts. They pay a company's expenses, plus a guaranteed profit of one to eight percent. There are no limits on total costs, so the more a firm charges in expenses, the more profit it makes. If the Federal Government's going to spend my constituents' money that way, without asking for competitive bids, I think my constituents deserve to know why.

Let me give you two concrete examples of the kind of secrecy I'm talking about. A lot of the known details come from press reports. In February and March, USAID invited a handful of companies to bid on $1.7 billion in Iraqi projects—rebuilding highways, bridges, schools. Competition for one $600 million contract was limited to seven large U.S. engineering firms. USAID apparently put out some bid invitations before the war even started.

On March 24, the Army Corps of Engineers announced a sole-source, unlimited contract to two American companies to control Iraqi oil fires. The no-bid contract is still classified. Information that should be available to the public was finalized on March 8 but is still under wraps. What we know is that other firms that had experience putting out oil well fires in Kuwait in 1991 were left out of the process altogether. And we also know that as early as last fall, the parent company of these contractors got an exclusive contract to study how to supply oil services during an invasion of Iraq.

Anybody looking to find an explanation for this closed-door contracting is likely to come up short. So far the agencies haven't said much. Last month, USAID announced that it would limit competition to companies with demonstrated technical ability, proven accounting mechanisms, ability to field a qualified technical team on short notice, and authority to handle classified national security material. The USAID Director told The New York Times that to work in Iraq you have to have a security clearance, and only these few American companies have that clearance.

I sit on the Intelligence Committee, and don't know of any good reason why a contractor bidding to rebuild a school, hospital, sewer system or any other part of Iraq's infrastructure would need a security clearance. In any case, four of USAID's eight reconstruction projects will allow subcontracting to companies that don't have to meet the security requirements. So that argument doesn't hold up.

Our bill has a simple premise to ensure accountability in the awarding process. It says that any Federal entity bypassing competitive bidding for Iraqi reconstruction projects has to disclose some key information. Most importantly, that means revealing the documents used to justify a sole-source or limited contract. Agencies are already required by law to prepare this rationale for sole source bidding. Our bill just makes the information accessible. We've written provisions to protect classified information, while still giving Congress full oversight over the billions in taxpayer money that Americans are being asked to commit in Iraq.

There are too many questions and the stakes are too high for Congress not to demand public disclosure of this information. I am pleased that Senators COLLINS, CLINTON, BYRD and LIEBERMAN are joining me in introducing this legislation to bring greater accountability and openness to the contracting for Iraq reconstruction.

I ask unanimous consent that a copy of our bill be printed in the RECORD.

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

S. 876

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sunshine in Iraq Reconstruction Contracting Act of 2003''.

SEC. 2. PUBLIC DISCLOSURE OF NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE IN IRAQ.

(a) DISCLOSURE REQUIRED.—

(1) PUBLICATION AND PUBLIC AVAILABILITY.—The head of an executive agency of the United States that enters into a contract for the repair, maintenance, rehabilitation, or construction of infrastructure in Iraq without full and open competition shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

(A) The amount of the contract.

(B) A brief description of the scope of the contract.

(C) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(D) The justification and approval documents on which was based the determination

to use procedures other than procedures that provide for full and open competition.

(2) INAPPLICABILITY TO CONTRACTS AFTER FISCAL YEAR 2013.—Paragraph (1) does not apply to a contract entered into after September 30, 2013.

(b) CLASSIFIED INFORMATION.—

(1) AUTHORITY TO WITHHOLD.—The head of an executive agency may—

(A) withhold from publication and disclosure under subsection (a) any document that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; and

(B) redact any part so classified that is in a document not so classified before publication and disclosure of the document under subsection (a).

(2) AVAILABILITY TO CONGRESS.—In any case in which the head of an executive agency withholds information under paragraph (1), the head of such executive agency shall make available an unredacted version of the document containing that information to the chairman and ranking member of each of the following committees of Congress:

(A) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(B) The Committees on Appropriations of the Senate and the House of Representatives.

(C) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

(c) FISCAL YEAR 2003 CONTRACTS.—This section shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act, subsection (a) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

(d) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—Nothing in this section shall be construed as affecting obligations to disclose United States Government information under any other provision of law.

(e) DEFINITIONS.—In this section, the terms ''executive agency'' and ''full and open competition'' have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

By Mr. BURNS (for himself, Mr. WYDEN, Mr. STEVENS, Mr. BREAUX, Mr. THOMAS, Ms. LANDRIEU, and Mr. SCHUMER):

S. 877. A bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Thank you, Mr. President. I rise today to introduce the CAN-SPAM bill along with my good friend and colleague Senator WYDEN. The CAN-SPAM bill addresses an issue of critical importance to the further development of commerce on the Internet: how to control the explosion of unsolicited commercial e-mail. I also want to thank the additional original cosponsors of the bill, Senator STEVENS, Senator BREAUX, Senator THOMAS, Senator LANDRIEU and Senator SCHUMER.

While it is obvious to anyone with an e-mail account that the scourge of ''spam'' has continued to worsen, the numbers and the trends they represent paint an even more disturbing picture. According to an article in the Washington Post less than a month ago, spam currently accounts for 40 percent of all e-mail traffic. Spam has become more than just an inconvenience that we have learned to live with; it has now become a fundamental part of any e-mail inbox with serious economic consequences. According to one study done by a consulting group, spam will cost U.S. businesses more than $10 billion this year alone.

Spam also makes working on the Internet less efficient, by clogging up servers on one end and inboxes on the other. I want some accountability brought to bear on this issue, and feel that by introducing this legislation today, we have taken an appropriate and meaningful step to tame a horse we can't seem to break just yet. This problem continues to escalate, and experts warn that more than half of e-mail traffic will be spam by this summer. This point bears repeating: within months, you will waste more than half of your time with unsolicited e-mail.

The CAN-SPAM bill would require e-mail marketers to comply with a straightforward set of workable, common-sense rules designed to give consumers more control over spam. Specifically, the bill would require a sender of marketing e-mail to include a clear and conspicuous ''opt-out'' mechanism so that they could ''unsubscribe'' from further unwanted e-mail. Also, the bill would prohibit e-mail marketers from using deceptive headers or subject lines, so that consumers will be able to tell who initiated the solicitation.

The bill includes strong enforcement provisions to ensure compliance. The Federal Trade Commission would have authority to impose steep civil fines of up to $500,000 on spammers. This fine could be tripled if the violation is found to be intentional. In short, this bill provides broad consumer protection against bad actors, while still allowing Internet advertising a justified means of flourishing.

Spamming is a serious economic problem and I believe it is absolutely critical that we address this now, so that the Internet is allowed to reach its full potential. Because of the vast distances in Montana, many of my constituents are forced to pay long-distance charges for their time on the Internet. Spam makes it nearly impossible for these people to enjoy the experience, and it makes it even harder for them to see how this will help rural America flourish in the 21st century. Also, Internet service providers are bombarded with spam that often corrupts or shuts down their systems. In today's information age where beating the competitor to the next sale is absolutely critical to survival, these shutdowns can cause real economic damage. We may be in a downturn in the American economy and especially in the high technology sector, but the efficiencies created through vast information sharing are here to stay and will help propel our economy to levels beyond our imagination, but in order to reach this potential we must eliminate the bad actors who threaten these efficiencies.

The fact that this bill is strongly supported by pillars of the Internet age such as Yahoo, America Online and eBay is a testament to its common-sense approach. I think these companies for their critical expertise in perfecting this bill which would help to address this scourge of the digital age. I also appreciate the numerous valuable suggestions from the many concerned cyber-citizens who want to see this Pandora's box of digital dreck closed once and for all.

Mr. President, 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. 877

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 ''Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003'', or the ''CAN-SPAM Act of 2003''.

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) There is a right of free speech on the Internet.

(2) The Internet has increasingly become a critical mode of global communication and now presents unprecedented opportunities for the development and growth of global commerce and an integrated worldwide economy.

(3) In order for global commerce on the Internet to reach its full potential, individuals and entities using the Internet and other online services should be prevented from engaging in activities that prevent other users and Internet service providers from having a reasonably predictable, efficient, and economical online experience.

(4) Unsolicited commercial electronic mail can be a mechanism through which businesses advertise and attract customers in the online environment.

(5) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(6) Unsolicited commercial electronic mail may impose significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(8) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or ''opt-out'' of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no

such ''opt-out'' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(9) An increasing number of senders of unsolicited commercial electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and easily.

(10) An increasing number of senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

(11) In legislating against certain abuses on the Internet, Congress should be very careful to avoid infringing in any way upon constitutionally protected rights, including the rights of assembly, free speech, and privacy.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of unsolicited commercial electronic mail;

(2) senders of unsolicited commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

SEC. 3. DEFINITIONS.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term ''affirmative consent'', when used with respect to a commercial electronic mail message, means that the recipient has expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DOMAIN NAME.—The term ''domain name'' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term ''electronic mail address'' means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part''), to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term ''electronic mail message'' means a message sent to an electronic mail address.

(7) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address.

(9) IMPLIED CONSENT.—The term ''implied consent'', when used with respect to a commercial electronic mail message, means that—

(A) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

(B) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A) and at the time the notice under subparagraph (B) was provided to the recipient, as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender for purposes of this paragraph.

(10) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate such message or to procure the origination of such message, but shall not include actions that constitute routine conveyance of such message.

(11) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(12) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(13) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2) of title 18, United States Code.

(14) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) ROUTINE CONVEYANCE.—The term ''routine conveyance'' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has provided and selected the recipient addresses.

(16) SENDER.—The term ''sender'', when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(17) TRANSACTIONAL OR RELATIONSHIP MESSAGES.—The term ''transactional or relationship message'' means an electronic mail message the primary purpose of which is to facilitate, complete, confirm, provide, or request information concerning—

(A) a commercial transaction that the recipient has previously agreed to enter into with the sender;

(B) an existing commercial relationship, formed with or without an exchange of consideration, involving the ongoing purchase or use by the recipient of products or services offered by the sender; or

(C) an existing employment relationship or related benefit plan.

(18) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.—The term ''unsolicited commercial electronic mail message'' means any commercial electronic mail message that—

(A) is not a transactional or relationship message; and

(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1351. Unsolicited commercial electronic mail containing fraudulent transmission information

''(a) IN GENERAL.—Any person who initiates the transmission, to a protected computer in the United States, of an unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

''(b) DEFINITIONS.—Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1351. Unsolicited commercial electronic mail containing fraudulent routing information''.

SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that contains, or is accompanied by, header information that is materially or intentionally false or materially or intentionally misleading. For purposes of this paragraph, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message with a subject heading that such person

knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of an unsolicited commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified by the sender, a reply electronic mail message or other form of Internet-based communication requesting not to receive any future unsolicited commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The sender of an unsolicited commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the problem with receiving messages or processing requests is corrected within a reasonable time period.

(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request to a sender, using a mechanism provided pursuant to paragraph (3), not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful—

(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request; or

(C) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of an unsolicited commercial electronic mail message that the person knows, or consciously avoids knowing, would violate subparagraph (A) or (B).

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It is unlawful for any person to initiate the transmission of any unsolicited commercial electronic mail message to a protected computer unless the message provides—

(A) clear and conspicuous identification that the message is an advertisement or solicitation;

(B) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further unsolicited commercial electronic mail messages from the sender; and

(C) a valid physical postal address of the sender.

(b) PROHIBITION OF TRANSMISSION OF UNLAWFUL UNSOLICITED COMMERCIAL ELECTRONIC MAIL TO CERTAIN HARVESTED ELECTRONIC MAIL ADDRESSES.—

(1) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of an unsolicited commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such a message through the provision or selection of addresses to which the message will be sent, if such person knows that, or acts with reckless disregard as to whether—

(A) the electronic mail address of the recipient was obtained, using an automated means, from an Internet website or proprietary online service operated by another person; or

(B) the website or proprietary online service from which the address was obtained included, at the time the address was obtained, a notice stating that the operator of such a website or proprietary online service will not give, sell, or otherwise transfer addresses maintained by such site or service to any other party for the purpose of initiating, or enabling others to initiate, unsolicited electronic mail messages.

(2) DISCLAIMER.—Nothing in this subsection creates an ownership or proprietary interest in such electronic mail addresses.

(c) COMPLIANCE PROCEDURES.—An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that —

(1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

(2) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties

and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction or in any other court of competent jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message received by such residents treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the State shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(4) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(6) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(f) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to—

(A) enjoin further violation by the defendant; or

(B) recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message carried over the facilities of the provider of Internet access service or sent to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b) treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

(3) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

SEC. 7. EFFECT ON OTHER LAWS.

(a) FEDERAL LAW.—

(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any State or local government statute, regulation, or rule regulating the use of electronic mail to send commercial messages.

(2) EXCEPTIONS.—Except as provided in paragraph (3), this Act does not supersede or pre-empt—

(A) State trespass, contract, or tort law or any civil action thereunder; or

(B) any provision of Federal, State, or local criminal law or any civil remedy available under such law that relates to acts of fraud or theft perpetrated by means of the unauthorized transmission of commercial electronic mail messages.

(3) LIMITATION ON EXCEPTIONS.—Paragraph (2) does not apply to a State or local government statute, regulation, or rule that directly regulates unsolicited commercial electronic mail and that treats the mere sending of unsolicited commercial electronic mail in a manner that complies with this Act as sufficient to constitute a violation of such statute, regulation, or rule or to create a cause of action thereunder.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act.

SEC. 9 SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

SEC. 10. EFFECTIVE DATE.

The provisions of this Act shall take effect 120 days after the date of the enactment of this Act.

Mr. WYDEN. Mr. President, I am pleased today to be teaming up again with my good friend Senator BURNS to reintroduce legislation to address the rising tide of unsolicited commercial e-mail, commonly known as ''spam.''

In the last Congress, our anti-spam legislation was approved unanimously by the Senate Commerce Committee. Since that time—nearly a year ago now—the problem of spam has been increasing at an alarming rate. Roughly

40 percent of all e-mail traffic in the United States is spam, up from 8 percent in late 2001 and nearly doubling in the past six months. By 2004, according to some estimates, a typical company that fails to take defensive action could find that over 50 percent of its e-mail messages will be spam. This isn't just annoying, it's costly: one consulting group has estimated that spam will cost U.S. organizations more than $10 billion this year, due to expenses for anti-spam equipment and manpower and lost productivity.

If nothing is done, the situation is only likely to get worse. The fundamental problem—and what makes spam different from other types of marketing—is that it is so cheap to send huge volumes of messages. With the stroke of a key, the spammer can let fly a massive torrent of e-mails. And since the sender doesn't pay any per-message postage, the incentive is to send as many as possible. The cost of all these extra messages is borne by the Internet service providers, ISPs, and the recipients, not by the sender. So as far as the spammer is concerned, the sky is the limit.

Anyone who uses e-mail should be deeply concerned about this trend. In a few short years, e-mail quickly went from a novelty to a core medium of communication for millions of Americans. They came to rely on it daily, for business and personal communications alike. But just as quickly as e-mail rose to prominence, its usefulness could dwindle—buried under an avalanche of endless ''Get Rich Quick,'' ''Lose Weight Fast,'' and offensive pornographic marketing pitches. As consumers grow frustrated with bloated in-boxes, and as ISP networks and e-commerce websites are slowed by mounting junk e-mail traffic jams, enthusiasm for the entire medium of e-mail and e-commerce could sour.

Right now, e-mail users and ISPs are trying to manage the problem as best they can. They use filtering software, or lists of known spammers, or sign up for special anti-spam services. But these tactics can be burdensome, costly, and only partially effective. The fact is, existing laws do not provide sufficient tools. More help is needed.

Many States have moved to address the issue. But e-mail is not a medium that respects, or even recognizes, State borders. Indeed, e-mail addresses tell nothing about which State the user is located in, so the sender and recipient of an e-mail message may have no clue where the other is located. Therefore, this is one area where a State-by-State patchwork of rules makes no sense. It is time for a nationwide approach.

That is why Senator BURNS and I are reintroducing the ''Controlling the Assault of Non-Solicited Pornography and Marketing Act''—the CAN SPAM Act, for short. This bipartisan legislation says that if you want to send unsolicited marketing e-mail, you've got to play by a set of rules—rules that allow the recipient to see where the messages are coming from, and to tell the sender to stop. The basic goal is simple: give the consumer more control.

Specifically, the bill would prohibit the use of falsified or deceptive headers or subject lines, so that consumers will be able to identify the true source of the message. A sender of unsolicited marketing e-mail would also be required to provide the recipient with a return address or similar mechanism that can be used to tell the sender, ''no more.'' And once a consumer says ''no more,'' a sender would be required to honor that request. Senders of unsolicited commercial messages would also be required to include a clear notification that the message is an advertisement or solicitation, and a valid physical postal address.

The bill includes strong enforcement provisions to ensure compliance. Spammers that intentionally disguise their identities would be subject to misdemeanor criminal penalties. The Federal Trade Commission would have authority to impose civil fines. State attorneys general would be able to bring suit on behalf of the citizens of their states. And ISPs would be able to bring suit to keep unlawful spam off their networks. In all cases, particularly high penalties would be available for true ''bad actors''—the shady, high-volume spammers who have no intention of behaving in a lawful and responsible manner.

Our goal here is not to discourage legitimate online communications between businesses and their customers. Senator BURNS and I have no intention of interfering with a company's ability to use e-mail to inform customers of warranty information, provide account holders with monthly account statements, and so forth. Rather, we want to go after those unscrupulous individuals who use e-mail in an annoying and misleading fashion. I believe this bill strikes that important balance.

Senator BURNS and I have been at this for three years now, and have worked with many different groups in shaping the legislation. We believe we have made real progress in addressing some of the legitimate concerns that were raised about previous versions of the bill. Naturally, there are interested parties who have additional ideas for measures they would like to see. We will be happy to continue to work with them, and I would also point out that the bill calls for a study to evaluate this initial Federal step against spam and to determine whether further provisions are needed. But the bill we are introducing today offers a workable, common-sense approach that should be politically viable this year.

I am pleased that Senators BREAUX, LANDRIEU, SCHUMER, and THOMAS are joining Senator BURNS and me in cosponsoring this legislation. I urge the rest of my Senate colleagues to join with us on moving it forward as promptly as possible, so that the Senate won't still be debating the issue, with no action taken, several years from now.

By Mr. SMITH.

S. 879. A bill to amend the Internal Revenue Code of 1986 to increase and extend the special depreciation allowance, and for other purpose; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Economic Stimulus Act of 2003, legislation that will allow a 50 percent bonus depreciation over a 5 year period. Last year I was proud to introduce and pass a 30 percent bonus depreciation incentive as part of legislation signed into law in March 2002. We had great bipartisan support on this issue and I hope that similar action will take place during consideration of this year's tax bill.

I introduce the Economic Stimulus Act of 2003 in order to build on last year's effort by both increasing that bonus to 50 percent and extending it through 2008. Our economy clearly needs a boost, and this provision will complement many of the provisions in President Bush's economic growth package.

Recently, U.S. Department of Commerce data revealed that private investment in high tech equipment ended it's decline as this provision went into effect last year and has begun to increase modestly in the past year. A significant increase in that bonus along with an extension of its effective date can only boost business investment even further. By extending the effective date past next year, businesses will be able to better plan for sustained increases in technology investment.

This legislation will provide an immediate and broad stimulus to the U.S. economy by encouraging business investment. In my own state of Oregon I can look to both heavy industry and the hi tech sector and see the real return this legislation will have on our economy. Heavy industry in my state will have an ability to save family-wage jobs and put additional employees to work in Oregon. For example, the rail supply industry has been hard hit, and though there is a need for investment, there has been a reluctance to invest significant sums that are necessary to sustain this industry. Bonus depreciation provisions is an additional incentive that will lead institutional investors, leasing companies, shippers and railroads to invest in new rail equipment.

In Oregon's high-tech sector the strong increase in the first year depreciation amount will have a real and positive impact on the investment environment for high-tech equipment, such as computer hardware, software and broadband network infrastructure. This legislation will definitely stimulate the demand for the software and the whole high-tech sector. In Oregon, the hi-tech sector has been a major component of economic growth and I am intent that this engine of growth continue to provide stimulus to the economy.

I note that there are a myriad of bonus depreciation proposals out there. Most don't provide enough lead time however to make real and substantive business decisions. The current downturn is caused in part by a decline in business investment. So what kind of investment can be stimulated by a year-long depreciation incentive? It probably gives business people time to buy a chair and some new wastebaskets.

But a year is not enough time to start a major project that could employ thousands of people. It doesn't allow time to build heavy equipment, modernize a lumber mill, revamp a corporate computer system, repair a railbed, or construct an airplane. It doesn't allow enough time to obtain building permits, perform environmental reviews, or complete architectural or engineering studies.

We need to create a booming economy not just for today, but for the next several years. So I must emphasize that short depreciation proposals lack economic weight.

Bonus depreciation is probably the best idea of any stimulus proposal. I ask that all my colleagues consider and support the Economic Stimulus Act of 2003. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 879

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 ''Economic Stimulus Act of 2003''.

SEC. 2. EXPANSION OF SPECIAL DEPRECIATION ALLOWANCE.

(a) IN GENERAL.—Subsection (k) of section 168 (relating to accelerated cost recovery system) is amended—

(1) by adding at the end of paragraph (1) the following new flush sentence:

''In the case of any qualified property acquired by the taxpayer pursuant to a written binding contract which was entered into after the date of the enactment of the Economic Stimulus Act of 2003, subparagraph (A) shall be applied by substituting '50 percent' for '30 percent'.'',

(2) by redesignating subclauses (III) and (IV) of paragraph (2)(A)(i) as subclauses (IV) and (V), respectively,

(3) by inserting after subclause (II) of paragraph (2)(A)(i) the following new subclause:

''(III) which is a motion picture film or videotape (as defined in section 167(f)(1)(B) for which a deduction is allowable under section 167 without regard to this subsection,'',

(4) by striking clause (iv) of paragraph (2)(A) and inserting the following new clause:

''(iv) which is placed in service by the taxpayer—

''(I) except as provided in subclauses (II) and (III), before April 1, 2010,

''(II) in the case of transportation property described in subparagraph (B), before the later of the date which is 90 days after delivery of such property or which is 10 years after the date of the enactment of the Economic Stimulus Act of 2003, or

''(III) in the case of other property described in subparagraph (B), before January 1, 2011.'',

(5) by inserting ''transportation property which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A), or other'' before ''property'' in the matter preceding subclause (I) of paragraph (2)(B)(i),

(6) by striking ''production before September 11, 2004.'' in paragraph (2)(B)(ii) and inserting ''production—

''(I) with respect to transportation property, before the earlier of the date which is 90 days after delivery of such property or which is 10 years after the date of the enactment of the Economic Stimulus Act of 2003, and

''(II) with respect to other property, before January 1, 2010.'',

(7) by striking ''SEPTEMBER 11, 2004'' in the heading of clause (ii) of paragraph (2)(B) and inserting ''CERTAIN'',

(8) by striking ''subparagraph'' in paragraph (2)(B)(iii) and inserting ''paragraph'',

(9) by striking ''September 11, 2004'' each place it appears in the subsection and inserting ''January 1, 2010'', and

(10) by striking ''SEPTEMBER 11, 2004'' in the heading thereof and inserting ''JANUARY 1, 2010''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for clause (i) of section 1400L(b)(2)(C) of the Internal Revenue Code of 1986 is amended by striking ''30 PERCENT ADDITIONAL'' and inserting ''ADDITIONAL''.

(2) Section 1400L(b)(2)(D) of such Code is amended by inserting ''(as in effect on the day after the date of the enactment of this section)'' after ''section 168(k)(2)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property acquired after the date of the enactment of this Act, in taxable years ending after such date.

By Mr. BINGAMAN (for himself, Mr. COCHRAN, Mrs. LINCOLN, Mr. HATCH, Mr. JEFFORDS, Ms. LANDRIEU, and Mr. DAYTON):

S. 881. A bill to amend title XVIII of the Social Security Act to establish a minimum geographic cost-of-practice index value for physicians' services furnished under the Medicare program; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators COCHRAN, LINCOLN, HATCH, JEFFORDS, LANDRIEU, and DAYTON entitled the ''Rural Equity Payment Index Reform Act of 2003'' is designed to reduce the work payment inequity between urban and rural localities under the Medicare physician fee schedule. This legislation is a companion bill to HR 33, introduced by Representative Doug Bereuter, which now has over 65 House cosponsors.

In my own State of New Mexico, recruitment and retention of physicians in rural areas is an ongoing problem, which is contributed to, in a part, by inequities in payments these physicians receive in comparison to their urban counterparts. With only 170 physicians per 100,000 people, New Mexico ranks well behind the national average with regard to primary care and specialist physicians.

Lack of adequate reimbursement, in the face of increasing costs, is a critical factor leading to the shortage of physician services in my state, and in other rural areas. The State of New Mexico ranks 32nd in the nation in terms of Medicare reimbursement, as defined by the geographic adjustment factor used to set reimbursement rates. Yet, an office visit to a rural physician is no different in time, effort, or workload compared to an office visit to an urban physician. Geographically adjusting the quantifiable workload simply makes no sense; physician work should be valued equally, irrespective of where a physician works.

This inequity unfairly ''punishes'' physicians in non-metropolitan areas, where there are often proportionately larger populations of Medicare beneficiaries. In effect, the rural areas subsidize healthcare in urban areas, while they struggle to attract health care professionals. Since Medicare beneficiaries pay into the program on the basis of income and wages, and beneficiaries pay the same premium for part B services, these inequitable physician fee payments result in substantial cross-subsidies from people living in low payment States to people living in higher payment States.

Targeted efforts to provide relief to rural doctors in low payment localities with more equitable payments would improve access to primary and tertiary services. The bill I am introducing would lessen the disparity that currently exists between rural and urban areas. It gradually phases in a floor that upwardly adjusts reimbursement rates for rural providers, without lowering the reimbursement for urban providers, so that the discrepancy will progressively be corrected.

This bill would phase-in a floor of 1.000 for the Medicare ''physician work adjuster'', thereby raising all localities with a work adjuster below 1.000 to that level. This proposed change would be put in place without regard to the budget neutrality agreement in the present law. The phase-in approach softens the budgetary implications by spreading it out over four years.

It is estimated that payment rates to New Mexico physicians will increase by 2.8 million dollars over a 4-year period. In my state, this represents an important increase in reimbursements for physicians, but it also represents a tangible acknowledgement of the hard work and efforts that our physicians commit to patient care, particularly rural based physicians.

Some of the following organizations, which have expressed support for this legislation, include the National Rural Health Association, the American College of Physicians/American Society of Internal Medicine, and the American Physical Therapy association.

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

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

S. 881

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

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the ''Rural Equity Payment Index Reform Act of 2003''.

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

(1) Variations in the physician work adjustment factors under section 1848(e) of the Social Security Act (42 U.S.C. 1395w–4w(e)) result in a physician work payment inequity between urban and rural localities under the medicare physician fee schedule.

(2) The amount the medicare program spends on its beneficiaries varies substantially across the country, far more than can be accounted for by differences in the cost of living or differences in health status.

(3) Since beneficiaries and others pay into the program on the basis of income and wages and beneficiaries pay the same premium for part B services, these payments result in substantial cross-subsidies from people living in low payment States with conservative practice styles or beneficiary preferences to people living in higher payment States with aggressive practice styles or beneficiary preferences.

(4) Congress has been mindful of these variations when it comes to capitation payments made to managed care plans under the Medicare+Choice program and has put in place floors that increase monthly payments by more than one-third in some of the lowest payment counties over what would otherwise occur. But this change addresses only a very small fraction of medicare beneficiaries who are presently enrolled in Medicare+Choice plans operating in low payment counties.

(5) Unfortunately, Congress has only begun to address the underlying problem of substantial geographic variations in fee-for-service spending under traditional medicare.

(6) Improvements in rural hospital payment systems under the medicare program help to reduce aggregate per capita payment variation as rural hospitals are in large part located in low payment counties.

(7) Many rural communities have great difficulty attracting and retaining physicians and other skilled health professionals.

(8) Targeted efforts to provide relief to rural doctors in low payment localities would further reduce variation by improving access to primary and tertiary services along with more equitable payment.

(9) Geographic adjustment factors in the medicare program's resource-based relative value scale unfairly suppress fee-for-service payments to rural providers.

(10) Actual costs are not presently being measured accurately and payments do not reflect the costs of providing care.

(11) Unless something is done about medicare payment in rural areas, as the baby boom cohort ages into medicare, the financial demands on rural communities to subsidize care for their aged and disabled medicare beneficiaries will progress from difficult to impossible in another 10 years.

(12) The impact on rural health care infrastructure will be first felt in economically depressed rural areas where the ability to shift costs is already limited.

SEC. 2. PHYSICIAN FEE SCHEDULE WAGE INDEX REVISION.

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraphs (B) and (C)'' and inserting ''subparagraphs (B), (C), and (E)''; and

(2) by adding at the end the following new subparagraph:

''(E) FLOOR FOR WORK GEOGRAPHIC INDICES.—

''(i) IN GENERAL.—Notwithstanding the work geographic index otherwise calculated under subparagraph (A)(iii), in no case may the work geographic index applied for payment under this section be less than—

''(I) 0.976 for services furnished during 2004;

''(II) 0.987 for services furnished during 2005;

''(III) 0.995 for services furnished during 2006; and

''(IV) 1.000 for services furnished during 2007 and subsequent years.

''(ii) EXEMPTION FROM LIMITATION ON ANNUAL ADJUSTMENTS.—The increase in expenditures attributable to clause (i) shall not be taken into account in applying subsection (c)(2)(B)(ii)(II).''.

NRHA SUPPORTS ''EQUAL PAY FOR EQUAL WORK''

WASHINGTON, DC., Jan. 7.—The National Rural Health Association (NRHA) today strongly endorsed legislation introduced by Representative Doug Bereuter (R.–Neb) that would provide rural physicians with Medicare payments closer to those of their urban counterparts. The Rural Equity Payment Index Reform Act addresses the little known fact that the federal government pays rural doctors at a lower rate.

''An office visit to a rural physician is no different than an office visit to an urban physician,'' NRHA President Wayne Myers, M.D., said. ''The idea that physicians are reimbursed for their work and their skills at a lower rate simply on the basis that they choose to practice in a rural area and serve our rural communities is completely ludicrous.''

The Bereuter bill would lessen the disparity that currently exists between urban and rural areas. By gradually phasing in a floor that upwardly adjusts reimbursement rates for rural providers, without lowering the reimbursement in urban areas, the discrepancy in payment will progressively be corrected. ''These health care providers put as much or even more time, skill and intensity into a patient visit as their urban counterparts,'' Rep. Bereuter said, ''yet they are paid less for their work under the Medicare program. This is a formula that is punishing non-metropolitan areas.''

Under the current Medicare physician payment formula, residents of non-metropolitan areas essentially subsidize the delivery of health care in metropolitan areas. Even though rural areas tend to have larger populations of Medicare beneficiaries, they are subsidizing health care in urban areas, while their own communities are struggling to attract health care professionals.

''This is a top priority issue for the NRHA,'' Myers said. ''In fact, this disparity in health care is among the basic reasons the NRHA exists. ''For far too long, rural American health care has been overlooked in Washington. We applaud Congressman Bereuter for his efforts and look forward to working with him to ensure rural physicians—and rural residents alike—receive an equitable deal.''

The NRHA is a national nonprofit membership organization that provides leadership on rural health issues. The association's mission is to improve the health of rural Americans and to provide leadership on rural health issues through advocacy, communications, education and research. The NRHA membership is made up of a diverse collection of individuals and organizations.

AMERICAN PHYSICAL THERAPY ASSOCIATION,
March 25, 2003.

Hon. DOUG BEREUTER (R–NE),
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN BEREUTER: The American Physical Therapy Association (APTA) would like to express its appreciation for your legislation to correct an inequity in Medicare payments to rural health care providers. APTA strongly supports HR 33, The Rural Equity Payment Index Reform (REPaIR) Act. This legislation is a positive step to ensuring improved access to quality health care services, including those delivered by licensed physical therapists, in rural America. The current inequity of payment to health care providers under the Medicare physician fee schedule and its Geographic Medical Practice Index needs to be corrected to ensure that qualified providers continue to serve the needs of our rural communities.

Physical therapists are highly qualified and recognized providers under Medicare who bill for their services under the Medicare Physician Fee Schedule. Your legislation (HR 33) would improve access and payment for appropriate physical therapy services in rural and underserved areas. This legislation would also go a long way to attract and retain physical therapist to consider rural areas for practice and service. Access to qualified health care providers is a growing problem in rural America and your legislation is one of many steps to reverse this trend.

We applaud your dedication to rural health and express our support that Congress pass HR 33, The Rural Equity Payment Index Reform (REPaIR) Act in this Congress. If you have questions, please feel free to contact Justin Moore at 703–706–3162 or *justinmoore@apta.org.*

Sincerely,

G. DAVID MASON,
Vice President, Government Affairs.

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

S. 882. A bill to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safeguards, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today we are introducing the Tax Administration Good Government Act.

The legislation contains five major components. First, it provides additional safeguards for taxpayers. Second, the legislation significantly simplifies the current interest and penalty regimes. Third, the Act also includes the proposals passed out of the Finance Committee on April 2, 2003 and included in a bill introduced by Senators HATCH and BREAUX to modernize the United States Tax Court.

Fourth, our legislation also includes several provisions, some of which were requested by the Treasury Department and the Joint Committee on Taxation, to strike an appropriate balance in protecting taxpayer confidentiality through disclosure reforms. Finally, the legislation takes a small, but important step toward simplification of the tax code through the elimination of obsolete provisions.

We have worked closely with the Treasury Department, the Internal Revenue Service, the National Taxpayer Advocate and the Joint Committee on Taxation to develop this package of proposals to promote good government in the administration of our tax code.

Congress's responsibility for the tax system does not stop after we pass tax law changes. We have an oversight responsibility to ensure that taxpayer rights are protected, that our tax laws are not administered counter to Congressional intent, that the judicial

body with primary jurisdiction over the tax laws has the tools necessary to provide independent review of controversies between taxpayers and the Internal Revenue Service, and to take steps to simplify the tax code whenever possible.

It is our intention to pass a package of tax administration good government proposals out of the Finance Committee in the coming months. We urge our colleagues to support this important legislation.

We also submit for the RECORD a more detailed description of the specific provisions included in the Tax Administration Good Government Act.

I ask unanimous consent that the text of the bill and the description be printed in the RECORD.

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

S. 882

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Administration Good Government Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; etc.

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection

Sec. 101. Waiver of user fee for installment agreements using automated withdrawals.
Sec. 102. Partial payment of tax liability in installment agreements.
Sec. 103. Termination of installment agreements.
Sec. 104. Office of Chief Counsel review of offers in compromise.
Sec. 105. Seven-day threshold on tolling of statute of limitations during National Taxpayer Advocate review.
Sec. 106. Increase in penalty for bad checks or money orders.
Sec. 107. Financial management service fees.
Sec. 108. Elimination of restriction on offsetting refunds from former residents.

Subtitle B—Processing and Personnel

Sec. 111. Explanation of statute of limitations and consequences of failure to file.
Sec. 112. Disclosure of tax information to facilitate combined employment tax reporting.
Sec. 113. Expansion of declaratory judgment remedy to tax-exempt organizations.
Sec. 114. Amendment to Treasury auction reforms.
Sec. 115. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.
Sec. 116. IRS Oversight Board approval of use of critical pay authority.
Sec. 117. Low-income taxpayer clinics.
Sec. 118. Enrolled agents.
Sec. 119. Establishment of disaster response team.
Sec. 120. Accelerated tax refunds.
Sec. 121. Study on clarifying record-keeping responsibilities.
Sec. 122. Streamline reporting process for National Taxpayer Advocate.

Subtitle C—Other Provisions

Sec. 131. Penalty on failure to report interests in foreign financial accounts.
Sec. 132. Repeal of personal holding company tax.

TITLE II—REFORM OF PENALTY AND INTEREST

Sec. 201. Individual estimated tax.
Sec. 202. Corporate estimated tax.
Sec. 203. Increase in large corporation threshold for estimated tax payments.
Sec. 204. Abatement of interest.
Sec. 205. Deposits made to suspend running of interest on potential underpayments.
Sec. 206. Freeze of provision regarding suspension of interest where Secretary fails to contact taxpayer.
Sec. 207. Expansion of interest netting.
Sec. 208. Clarification of application of Federal tax deposit penalty.
Sec. 209. Frivolous tax submissions.

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure

Sec. 301. Jurisdiction of Tax Court over collection due process cases.
Sec. 302. Authority for special trial judges to hear and decide certain employment status cases.
Sec. 303. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.
Sec. 304. Tax Court filing fee in all cases commenced by filing petition.
Sec. 305. Amendments to appoint employees.
Sec. 306. Expanded use of Tax Court practice fee for pro se taxpayers.

Subtitle B—Tax Court Pension and Compensation

Sec. 311. Annuities for survivors of Tax Court judges who are assassinated.
Sec. 312. Cost-of-living adjustments for Tax Court judicial survivor annuities.
Sec. 313. Life insurance coverage for Tax Court judges.
Sec. 314. Cost of life insurance coverage for Tax Court judges age 65 or over.
Sec. 315. Modification of timing of lump-sum payment of judges' accrued annual leave.
Sec. 316. Participation of Tax Court judges in the Thrift Savings Plan.
Sec. 317. Exemption of teaching compensation of retired judges from limitation on outside earned income.
Sec. 318. General provisions relating to magistrate judges of the Tax Court.
Sec. 319. Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court.
Sec. 320. Retirement and annuity program.
Sec. 321. Incumbent magistrate judges of the Tax Court.
Sec. 322. Provisions for recall.
Sec. 323. Effective date.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

Sec. 401. Clarification of definition of church tax inquiry.
Sec. 402. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 403. Taxpayer representatives not subject to examination on sole basis of representation of taxpayers.
Sec. 404. Prohibition of disclosure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors and other agents with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Civil damages for unauthorized inspection or disclosure.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c) organizations.
Sec. 411. Treatment of public records.
Sec. 412. Investigative disclosures.
Sec. 413. TIN matching.
Sec. 414. Form 8300 disclosures.
Sec. 415. Technical amendment.

TITLE V—SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

Sec. 501. Simplification through elimination of inoperative provisions.

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 101. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 102. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of

an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 103. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

''(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

''(D) to file a return of tax imposed under this title by its due date (including extensions), or''.

(b) CONFORMING AMENDMENT.—Section 6159(b)(4) is amended by striking ''FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION'' and inserting ''FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 105. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING NATIONAL TAXPAYER ADVOCATE REVIEW.

(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 106. INCREASE IN PENALTY FOR BAD CHECKS OR MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking ''$750'' and inserting ''$1,250'', and

(2) by striking ''$15'' and inserting ''$25''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after December 31, 2003.

SEC. 107. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

SEC. 108. ELIMINATION OF RESTRICTION ON OFFSETTING REFUNDS FROM FORMER RESIDENTS.

Section 6402(e) (relating to collection of past-due, legally enforceable State income tax obligations) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

Subtitle B—Processing and Personnel

SEC. 111. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2001 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of—

(1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and

(2) the consequences under such section 6511 of the failure to file a return of tax.

SEC. 112. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

Section 6103(d)(5) is amended to read as follows:

''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

SEC. 113. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

(2) by amending subparagraph (C) to read as follows:

''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) or 501(d) which is exempt from tax under section 501(a), or''.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after December 31, 2003.

SEC. 114. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to meetings held after the date of the enactment of this Act.

SEC. 115. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

''SEC. 7804A. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

''(a) IN GENERAL.—Subject to subsection (c), the Commissioner shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets,

''(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative,

''(3) with respect to a taxpayer or taxpayer representative, the violation of—

''(A) any right under the Constitution of the United States, or

''(B) any civil right established under—

''(i) title VI or VII of the Civil Rights Act of 1964,

''(ii) title IX of the Education Amendments of 1972,

''(iii) the Age Discrimination in Employment Act of 1967,

''(iv) the Age Discrimination Act of 1975,

''(v) section 501 or 504 of the Rehabilitation Act of 1973, or

''(vi) title I of the Americans with Disabilities Act of 1990,

''(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative,

''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery,

''(6) violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of

retaliating against, or harassing, a taxpayer or taxpayer representative,

''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry,

''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect,

''(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect, and

''(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

''(c) DETERMINATIONS OF COMMISSIONER.—

''(1) IN GENERAL.—The Commissioner may take a personnel action other than termination for an act or omission described under subsection (b).

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in the Commissioner's sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

''(3) NO APPEAL.—Any determination of the Commissioner under this subsection may not be appealed in any administrative or judicial proceeding.

''(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

''Sec. 7804A. Termination of employment for misconduct.''.

(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 116. IRS OVERSIGHT BOARD APPROVAL OF USE OF CRITICAL PAY AUTHORITY.

(a) IN GENERAL.—Section 7802(d)(3) (relating to management) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ''; and'', and by adding at the end the following new subparagraph:

''(D) review and approve the Commissioner's use of critical pay authority under section 9502 of title 5, United States Code, and streamlined critical pay authority under section 9503 of such title.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to personnel hired after the date of the enactment of this Act.

SEC. 117. LOW-INCOME TAXPAYER CLINICS.

(a) GRANTS FOR RETURN PREPARATION CLINICS.—

(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

''SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

''(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED RETURN PREPARATION CLINIC.—

''(A) IN GENERAL.—The term 'qualified return preparation clinic' means a clinic which—

''(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

''(ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

''(B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as assisting low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

''(2) CLINIC.—The term 'clinic' includes—

''(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

''(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

''(c) SPECIAL RULES AND LIMITATIONS.—

''(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

''(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

''Sec. 7526A. Return preparation clinics for low-income taxpayers.''.

(b) GRANTS FOR TAXPAYER REPRESENTATION AND ASSISTANCE CLINICS.—

(1) INCREASE IN AUTHORIZED GRANTS.—Section 7526(c)(1) (relating to aggregate limitation) is amended by striking ''$6,000,000'' and inserting ''$10,000,000''.

(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

(A) IN GENERAL.—Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

''(6) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.''.

(B) CONFORMING AMENDMENTS.—Section 7526(c)(5) is amended—

(i) by inserting ''qualified'' before ''low-income'', and

(ii) by striking the last sentence.

(3) PROMOTION OF CLINICS.—Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

''(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to grants made after the date of the enactment of this Act.

SEC. 118. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7527. ENROLLED AGENTS.

''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7527. Enrolled agents.''.

(c) PRIOR REGULATIONS.—Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 119. ESTABLISHMENT OF DISASTER RESPONSE TEAM.

(a) IN GENERAL.—Section 7508A (relating to authority to postpone certain tax-related deadlines by reason of presidentially declared disaster) is amended by adding at the end the following new subsection:

''(c) DUTIES OF DISASTER RESPONSE TEAM.—

''(1) RESPONSE TO DISASTERS.—The Secretary shall—

''(A) establish as a permanent office in the national office of the Internal Revenue Service a disaster response team composed of members, who in addition to their regular responsibilities, shall assist taxpayers in clarifying and resolving Federal tax matters associated with or resulting from any Presidentially declared disaster (as so defined), and

''(B) respond to requests by such taxpayers for filing extensions and technical guidance expeditiously.

''(2) PERSONNEL OF DISASTER RESPONSE TEAM.—The disaster response team shall be composed of—

''(A) personnel from the Office of the Taxpayer Advocate, and

''(B) personnel from the national office of the Internal Revenue Service with expertise in individual, corporate, and small business tax matters.

''(3) COORDINATION WITH FEMA.—The disaster response team shall operate in coordination with the Director of the Federal Emergency Management Agency.

''(4) TOLL-FREE TELEPHONE NUMBER.—The Commissioner of Internal Revenue shall establish and maintain a toll-free telephone number for taxpayers to use to receive assistance from the disaster response team.

''(5) INTERNET WEBPAGE SITE.—The Commissioner of Internal Revenue shall establish and maintain a site on the Internet webpage of the Internal Revenue Service for information for taxpayers described in paragraph (1)(A).''.

(b) FEMA.—The Director of the Federal Emergency Management Agency shall work in coordination with the disaster response team established under section 7804(c)(1)(A) of the Internal Revenue Code of 1986 to provide timely assistance to disaster victims described in such section, including—

(1) informing the disaster response team regarding any tax-related problems or issues arising in connection with the disaster,

(2) providing the toll-free telephone number established and maintained by the Internal Revenue Service for the disaster victims in all materials provided to such victims, and

(3) providing the information described in section 7804(c)(5) of such Code on the Internet webpage of the Federal Emergency Management Agency or through a link on such webpage to the Internet webpage site of the Internal Revenue Service described in such section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 120. ACCELERATED TAX REFUNDS.

(a) STUDY.—The Secretary of the Treasury shall study the implementation of an accelerated refund program for taxpayers who—

(1) maintain the same filing characteristics from year to year, and

(2) elect the direct deposit option for any refund under the program.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 121. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.

(a) STUDY.—The Secretary of the Treasury shall study—

(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986,

(2) the utility of requiring taxpayers to maintain all records indefinitely,

(3) such requirement given the necessity to upgrade technological storage for outdated records,

(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service, and

(5) proposals regarding taxpayer recordkeeping.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 122. STREAMLINE REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.

(a) ONE ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office) is amended—

(1) by striking all matter preceding subclause (I) of clause (ii) and inserting the following:

''(B) ANNUAL REPORT.—

''(i) IN GENERAL.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer of Advocate for the fiscal year beginning in such calendar year and the activities of such Office during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—'',

(2) by striking ''clause (ii)'' in clause (iv) and inserting ''clause (i)'', and

(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to reports in calendar year 2003 and thereafter.

Subtitle C—Other Provisions

SEC. 131. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 132. REPEAL OF PERSONAL HOLDING COMPANY TAX.

(a) IN GENERAL.—Part II of subchapter G of chapter 1 (relating to personal holding companies) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 12(2) is amended to read as follows:

''(2) For accumulated earnings tax, see part I of subchapter G (sec. 531 and following).''.

(2) Section 26(b)(2) is amended by striking subparagraph (G) and by redesignating the succeeding subparagraphs accordingly.

(3) Section 30A(c) is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(4) Section 41(e)(7)(E) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(5) Section 56(b)(2) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(6) Section 170(e)(4)(D) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(7) Section 111(d) is amended to read as follows:

''(d) SPECIAL RULES FOR ACCUMULATED EARNINGS TAX.—In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531—

''(1) any excluded amount under subsection (a) allowed for purposes of this subtitle (other than section 531) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 for the prior taxable year, and

''(2) where any excluded amount under subsection (a) was not allowed as a deduction for the prior taxable year for purposes of this subtitle other than section 531 but was allowable for the same taxable year under section 531, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531.''.

(8)(A) Section 316(b) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(B) Section 331(b) is amended by striking ''(other than a distribution referred to in paragraph (2)(B) of section 316(b))''.

(9) Section 341(d) is amended—

(A) by striking ''section 544(a)'' and inserting ''section 465(f)'', and

(B) by inserting before the period at the end of the next to the last sentence ''and such paragraph (2) shall be applied by inserting 'by or for his partner' after 'his family' ''.

(10) Section 381(c) is amended by striking paragraphs (14) and (17).

(11) Section 443(e) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(12) Section 447(g)(4)(A) is amended by striking ''other than—'' and all that follows and inserting ''other than an S corporation.''

(13)(A) Section 465(a)(1)(B) is amended to read as follows:

''(B) a C corporation which is closely held,''.

(B) Section 465(a)(3) is amended to read as follows:

''(3) CLOSELY HELD DETERMINATION.—For purposes of paragraph (1), a corporation is closely held if, at any time during the last half of the taxable year, more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) shall be considered an individual.''

(C) Section 465 is amended by adding at the end the following new subsection:

''(f) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of subsection (a)(3)—

''(1) STOCK NOT OWNED BY INDIVIDUAL.—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

''(2) FAMILY OWNERSHIP.—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

''(3) OPTIONS.—If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

''(4) APPLICATION OF FAMILY AND OPTION RULES.—Paragraphs (2) and (3) shall be applied if, but only if, the effect is to make the corporation closely held under subsection (a)(3).

''(5) CONSTRUCTIVE OWNERSHIP AS ACTUAL OWNERSHIP.—Stock constructively owned by

a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

''(6) OPTION RULE IN LIEU OF FAMILY RULE.—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

''(7) CONVERTIBLE SECURITIES.—Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock if the effect of the inclusion of all such securities is to make the corporation closely held under subsection (a)(3). The requirement under the preceding sentence that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.''

(D) Section 465(c)(7)(B) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(E) Section 465(c)(7)(G) is amended to read as follows:

''(G) LOSS OF 1 MEMBER OF AFFILIATED GROUP MAY NOT OFFSET INCOME OF PERSONAL SERVICE CORPORATION.—Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal service corporation (as defined in section 269A(b) but determined by substituting '5 percent' for '10 percent' in section 269A(b)(2)).''

(14) Sections 508(d), 4947, and 4948(c)(4) are each amended by striking ''545(b)(2),'' each place it appears.

(15) Section 532(b) is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(16) Sections 535(b)(1) and 556(b)(1) are each amended by striking ''section 541'' and inserting ''section 541 (as in effect before its repeal)''.

(17)(A) Section 553(a)(1) is amended by striking ''section 543(d)'' and inserting ''subsection (c)''.

(B) Section 553 is amended by adding at the end the following new subsection:

''(c) ACTIVE BUSINESS COMPUTER SOFTWARE ROYALTIES.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'active business computer software royalties' means any royalties—

''(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

''(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

''(2) ROYALTIES MUST BE RECEIVED BY CORPORATION ACTIVELY ENGAGED IN COMPUTER SOFTWARE BUSINESS.—The requirements of this paragraph are met if the royalties described in paragraph (1)—

''(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

''(B) are attributable to computer software which—

''(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

''(ii) is directly related to such trade or business.

''(3) ROYALTIES MUST CONSTITUTE AT LEAST 50 PERCENT OF INCOME.—The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

''(4) DEDUCTIONS UNDER SECTIONS 162 AND 174 RELATING TO ROYALTIES MUST EQUAL OR EXCEED 25 PERCENT OF ORDINARY GROSS INCOME.—

''(A) IN GENERAL.—The requirements of this paragraph are met if—

''(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

''(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

''(B) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

''(C) LIMITATION ON ALLOWABLE DEDUCTIONS.—For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account.''

(18) Section 561(a) is amended by striking paragraph (3), by inserting ''and'' at the end of paragraph (1), and by striking '', and'' at the end of paragraph (2) and inserting a period.

(19) Section 562(b) is amended to read as follows:

''(b) DISTRIBUTIONS IN LIQUIDATION.—Except in the case of a foreign personal holding company described in section 552—

''(1) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

''(2) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of paragraph (1), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.''

(20) Section 563 is amended by striking subsection (b).

(21) Section 564 is hereby repealed.

(22) Section 631(c) is amended by striking ''or section 545(b)(5)''.

(23) Section 852(b)(1) is amended by striking ''which is a personal holding company (as defined in section 542) or''.

(24)(A) Section 856(h)(1) is amended to read as follows:

''(1) IN GENERAL.—For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 465(a)(3) is met.''

(B) Section 856(h)(3)(A)(i) is amended by striking ''section 542(a)(2)'' and inserting ''section 465(a)(3)''.

(C) Paragraph (3) of section 856(h) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(D) Subparagraph (C) of section 856(h)(3), as redesignating by the preceding subparagraph, is amended by striking ''subparagraph (C)'' and inserting ''subparagraph (B)''.

(25) The last sentence of section 882(c)(2) is amended to read as follows:

''The preceding sentence shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.''.

(26) Section 936(a)(3) is amended by striking subparagraph (C), by inserting ''or'' at the end of subparagraph (B), and by redesignating subparagraph (D) as subparagraph (C).

(27) Section 992(d) is amended by striking paragraph (2) and by redesignating succeeding paragraphs accordingly.

(28) Section 992(e) is amended by striking ''and section 541 (relating to personal holding company tax)''.

(29) Section 1202(e)(8) is amended by striking ''section 543(d)(1)'' and inserting ''section 553(c)(1)''.

(30) Section 1362(d)(3)(C)(iii) is amended by adding at the end the following new sentence: ''References to section 542 in the preceding sentence shall be treated as references to such section as in effect on the day before its repeal.''

(31) Section 1504(c)(2)(B) is amended by adding ''and'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(32) Section 2057(e)(2)(C) is amended by adding at the end the following new sentence: ''References to sections 542 and 543 in the preceding sentence shall be treated as references to such sections as in effect on the day before their repeal.''

(33) Sections 6422 is amended by striking paragraph (3) and by redesignating paragraphs (4) through (12) and paragraphs (3) through (11), respectively.

(34) Section 6501 is amended by striking subsection (f).

(35) Section 6503(k) is amended by striking paragraph (1) and by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(36) Section 6515 is amended by striking paragraph (1) and by redesignating paragraphs (2) through (6) as paragraphs (1) through (5), respectively.

(37) Subsections (d)(1)(B) and (e)(2) of section 6662 are each amended by striking ''or a personal holding company (as defined in section 542)''.

(38) Section 6683 is hereby repealed.

(c) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part II.

(2) The table of sections for part IV of such subchapter G is amended by striking the item relating to section 564.

(3) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6683.

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 2003.

TITLE II—REFORM OF PENALTY AND INTEREST

SEC. 201. INDIVIDUAL ESTIMATED TAX.

(a) INCREASE IN EXCEPTION FOR INDIVIDUALS OWING SMALL AMOUNT OF TAX.—Section 6654(e)(1) (relating to exception where tax is small amount) is amended by striking ''$1,000'' and inserting ''$2,000''.

(b) COMPUTATION OF ADDITION TO TAX.—Subsections (a) and (b) of section 6654 (relating to failure by individual to pay estimated taxes) are amended to read as follows:

''(a) ADDITION TO THE TAX.—

''(1) IN GENERAL.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual for a taxable year, there shall be added to the tax under chapters 1 and 2 for the taxable year the amount determined under paragraph (2) for each day of underpayment.

''(2) AMOUNT.—The amount of the addition to tax for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

''(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

''(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

''(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

''(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

''(2) DETERMINATION OF INTEREST RATE.—

''(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

''(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

''(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

''(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 202. CORPORATE ESTIMATED TAX.

(a) INCREASE IN SMALL TAX AMOUNT EXCEPTION.—Section 6655(f) (relating to exception where tax is small amount) is amended by striking ''$500'' and inserting ''$1,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 203. INCREASE IN LARGE CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

(1) by striking ''$1,000,000'' in subparagraph (A) and inserting ''the applicable amount'',

(2) by redesignating subparagraph (B) as subparagraph (C), and

(3) by inserting after subparagraph (A) the following new subparagraph:

''(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A), the applicable amount is $1,000,000 increased (but not above $1,500,000) by $50,000 for each taxable year beginning after 2004.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 204. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST FOR PERIODS ATTRIBUTABLE TO ANY UNREASONABLE IRS ERROR OR DELAY.—Section 6404(e)(1) is amended—

(1) by striking ''in performing a ministerial or managerial act'' in subparagraphs (A) and (B),

(2) by striking ''deficiency'' in subparagraph (A) and inserting ''underpayment of any tax, addition to tax, or penalty imposed by this title'', and

(3) by striking ''tax described in section 6212(a)'' in subparagraph (B) and inserting ''tax, addition to tax, or penalty imposed by this title''.

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 205. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after December 31, 2003.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(G) (relating to suspension of interest and certain penalties where secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 207. EXPANSION OF INTEREST NETTING.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest accrued after December 31, 2003.

SEC. 208. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

SEC. 209. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 7811 (relating to taxpayer assistance orders),

''(II) section 6159 (relating to agreements for payment of tax liability in installments), or

''(III) section 7122 (relating to compromises).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

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

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure

SEC. 301. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date of the enactment of this Act.

SEC. 302. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

''(5) any proceeding under section 7436(c), and''.

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 303. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 304. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 305. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's

credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

''(3) DEPUTIES AND OTHER EMPLOYEES.—The clerk may appoint necessary deputies and employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such deputies and employees shall be subject to removal by the clerk.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based

upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 312. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 313. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 314. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

SEC. 315. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 316. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

SEC. 317. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under subsection (a)(5) of that section shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 318. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is

deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 319. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''**AND MAGISTRATE JUDGES**'' after ''**JUDGES**''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 321 of the Tax Administration Good Government Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 321 of the Tax Administration Good Government Act,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 321 of the Tax Administration Good Government Act, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 321 of the Tax Administration Good Government Act.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 321 of the Tax Administration Good Government Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) CONFORMING AMENDMENT.—The table of section for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 321. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay

for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 322. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

''(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

''(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

''(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

''(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

''Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

SEC. 323. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SEC. 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

''(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

SEC. 402. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

(b) ELIMINATION OF REPORTING REQUIREMENT.—Section 7803(d)(1) (relating to annual reporting) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), (F), and (G) as subparagraphs (B), (C), (D), (E), and (F), respectively.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

SEC. 403. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking ''TREASURY.—Returns and return information'' and inserting ''TREASURY.—

''(A) IN GENERAL.—Returns and return information'', and

(2) by adding at the end the following new subparagraph:

''(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return or return information of such representative on a basis other than by reason of such relationship.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFYING NUMBER WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's identifying number)'' after ''Return information''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS AND OTHER AGENTS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor or other agent to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this paragraph shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after December 31, 2003.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended—

(1) by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

''(1) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new paragraphs:

''(2) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—The return of any taxpayer, or return information with respect to such taxpayer, disclosed to a person or persons under paragraph (1) for a purpose specified in writing, electronically, or orally may be disclosed or used by such person or persons only for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified and shall not be disclosed or used for any other purpose.

''(3) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for written requests and consents which shall—

''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

''(4) CROSS REFERENCE.—

''For provision providing for civil damages for violation of paragraph (2), see section 7431(i).''.

(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

''(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SUBSECTION 6103(c).—Disclosure or use of returns or return information obtained under section 6103(c) other than for—

''(1) the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified in writing, electronically, or orally, or

''(2) subject to the safeguards set forth in section 6103, for purposes permitted under section 6103,

shall be treated as a violation of section 6103(a).''.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Secretary of the Treasury considers necessary or appropriate to better achieve the purposes of this section.

(d) SUNSET OF EXISTING CONSENTS.—Notwithstanding any other provision of law, any request for or consent to disclose any return or return information under section 6103(c) of the Internal Revenue Code of 1986 made before the date of the enactment of this Act shall remain in effect until the earlier of the date such request or consent is otherwise terminated or the date which is 3 taxable years after such date of enactment.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 407. CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OR DISCLOSURE.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Internal Revenue Service or, upon notice to the Secretary by a Federal or State agency, if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The notice described in this subsection shall include the date of the inspection or disclosure and the rights of the taxpayer under such administrative determination.''.

(b) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—Section 7431, as amended by this Act, is amended by adding at the end the following new subsection:

''(j) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—A judgment for damages shall not be awarded under subsection (c) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.''.

(c) PAYMENT AUTHORITY CLARIFIED.—

(1) IN GENERAL.—Section 7431, as amended by subsection (b), is amended by adding at the end the following new subsection:

''(k) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.''.

(2) ANNUAL REPORTS OF PAYMENTS.—The Secretary of the Treasury shall annually report to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding payments made from the United States Judgment Fund under section 7431(k) of the Internal Revenue Code of 1986.

(d) BURDEN OF PROOF FOR GOOD FAITH EXCEPTION RESTS WITH SECRETARY.—Section 7431(b) (relating to exceptions) is amended by adding at the end the following new flush sentence:

''In any proceeding involving the issue of the existence of good faith, the burden of proof with respect to such issue shall be on the Secretary.''.

(e) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) REPORT ON WILLFUL UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the willful unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

''(A) administrative investigations,

''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

''(C) criminal prosecutions.''.

(c) EFFECTIVE DATES.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) EXHAUSTION OF REMEDIES AND BURDEN OF PROOF.—The amendments made by subsections (b) and (d) shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act.

(3) PAYMENT AUTHORITY.—The amendment made by subsection (c)(1) shall take effect on the date of the enactment of this Act.

(4) REPORTS.—The amendment made by subsection (e) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL.—Section 6103(i)(3)(B)(i) (relating to danger of death or physical injury) is amended by striking ''or State law enforcement agency'' and inserting '', State, or local law enforcement agency''.

(b) CONFORMING AMENDMENTS.—Section 6103(p)(4) is amended—

(1) by striking ''(i)(3)(B)(i) or (7)(A)(ii)'' and inserting ''(i)(7)(A)(ii)'', and

(2) by striking '', (i)(3)(B)(i),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL.—Section 6103(m)(1) (relating to tax refunds) is amended by striking ''taxpayer identity information to the press and other media'' and by inserting ''a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c) ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

''(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

''(i) upon written request by an appropriate State officer, and

''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State

officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

''(3) DISCLOSURE WITH RESPECT TO CERTAIN OTHER EXEMPT ORGANIZATIONS.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may be inspected only by or disclosed only to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

''(5) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

''(i) the State attorney general,

''(ii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

''(iii) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 6103 is amended—

(A) by inserting ''or any appropriate State officer who has or had access to returns or return information under section 6104(c)'' after ''this section'' in paragraph (2), and

(B) by striking ''or subsection (n)'' in paragraph (3) and inserting ''subsection (n), or section 6104(c)''.

(2) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

(3) Paragraph (4) of section 6103(p), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18) or any appropriate State officer (as defined in section 6104(c))''.

(4) The heading for paragraph (1) of section 6104(c) is amended by inserting ''FOR CHARITABLE ORGANIZATIONS''.

(5) Paragraph (2) of section 7213(a) is amended by inserting ''or under section 6104(c)'' after ''6103''.

(6) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

(7) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. TREATMENT OF PUBLIC RECORDS.

(a) IN GENERAL.—Section 6103(b) (relating to definitions) is amended by adding at the end the following new paragraph:

''(12) TREATMENT OF PUBLIC RECORDS.—Returns and return information shall not be subject to subsection (a) if disclosed—

''(A) in the course of any judicial or administrative proceeding or pursuant to tax administration activities, and

''(B) properly made part of the public record.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 412. INVESTIGATIVE DISCLOSURES.

(a) IN GENERAL.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) INVESTIGATIVE DISCLOSURES.—Nothing in this section may be construed to prohibit investigative agents of the Internal Revenue Service from identifying themselves, their organizational affiliation, and the criminal nature of an investigation when contacting third parties in writing or in person.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 413. TIN MATCHING.

(a) IN GENERAL.—Section 6103(k) (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

''(10) TIN MATCHING.—The Secretary may disclose to any person required to provide a taxpayer identifying number (as described in section 6109) to the Secretary whether such information matches records maintained by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 414. FORM 8300 DISCLOSURES.

(a) IN GENERAL.—Section 6103(p)(4) (relating to safeguards) is amended by striking ''(15),'' both places it appears.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 415. TECHNICAL AMENDMENT.

(a) IN GENERAL.—Section 6103(i)(7)(A) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new clause:

''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE V—SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

SEC. 501. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS.

(a) IN GENERAL.—

(1) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—Paragraph (7) of section 1(f) is amended to read as follows:

''(7) SPECIAL RULE FOR CERTAIN BRACKETS.—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''.

(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—Paragraph (2) of section 1(h) is amended by striking ''In the case of any taxable year beginning after December 31, 2000, the'' and inserting ''The''.

(3) CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.—Section 29 is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(4) EARNED INCOME CREDIT.—Paragraph (1) of section 32(b) is amended—

(A) by striking subparagraphs (B) and (C), and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—In the case of taxable years beginning after 1995'' and moving the table 2 ems to the left.

(5) GENERAL BUSINESS CREDITS.—Subsection (d) of section 38 is amended by striking paragraph (3).

(6) CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.—Subsection (d) of section 39 is amended by striking paragraphs (1) through (8) and by redesignating paragraphs (9) and (10) as paragraphs (1) and (2), respectively.

(7) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

(8) ITEMS OF TAX PREFERENCE; DEPLETION.—Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

(9) INTANGIBLE DRILLING COSTS.—

(A) Clause (i) of section 57(a)(2)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''.

(B) Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993)''.

(10) ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—

(A) in subsection (c)(4) by striking ''; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954'', and

(B) in subsection (g)(3) by striking ''January 1, 1954, or'' and '', whichever is later''.

(11) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking ''or (d)''.

(12) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

(13) CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 112 is amended—

(A) by striking ''(after June 24, 1950)'' in paragraph (2), and

(B) striking ''such zone;'' and all that follows in paragraph (3) and inserting ''such zone.''.

(14) PRINCIPAL RESIDENCE.—Section 121(b)(3) is amended—

(A) by striking subparagraph (B); and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—'' and moving the text 2 ems to the left.

(15) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking ''after December 31, 1965,''.

(16) GREAT PLAINS CONSERVATION PROGRAM.—Section 126(a) is amended by striking paragraph (6) and by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(17) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).

(18) INTERIM AUTHORITY FOR GOVERNOR.—

(A) Section 146(e) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(B) Section 42(h)(3)(F) is amended by striking ''(other than paragraph (2)(B) thereof)''.

(19) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAW.—Section 162(g) is amended by striking the last sentence.

(20) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

(21) INTEREST.—

(A) Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) (relating to phase-in of limitation) of subsection (h).

(B) Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively.

(22) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—Section 170 is amended by striking subsection (k).

(23) AMORTIZABLE BOND PREMIUM.—Subparagraph (B) of section 171(b)(1) is amended to read as follows:

''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period of earlier call date, with reference to the amount payable on earlier call date), and''.

(24) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(A) Section 172 is amended—

(i) by striking subparagraph (D) of subsection (b)(1) and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively,

(ii) by striking subsection (g), and

(iii) by striking subparagraph (F) of subsection (h)(2).

(B) Section 172(h)(4) is amended by striking ''subsection (b)(1)(E)'' each place it appears and inserting ''subsection (b)(1)(D)''.

(C) Section 172(i)(3) is amended by striking ''subsection (b)(1)(G)'' each place it appears and inserting ''subsection (b)(1)(F)''.

(D) Section 172(j) is amended by striking ''subsection (b)(1)(H)'' each place it appears and inserting ''subsection (b)(1)(G)''.

(E) Section 172, as amended by subparagraphs (A) through (D) of this paragraph, is amended—

(i) by redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively,

(ii) by striking ''subsection (h)'' each place it appears and inserting ''subsection (g)'', and

(iii) by striking ''subsection (i)'' each place it appears and inserting ''subsection (h)''.

(25) RESEARCH AND EXPERIMENTAL EXPENDITURES.—Subparagraph (A) of section 174(a)(2) is amended to read as follows:

''(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.''.

(26) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

(27) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:

''(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''.

(28) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—Section 183(e)(1) is amended by striking the last sentence.

(29) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK; AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—

(A) Sections 244 and 247 are hereby repealed and the table of sections for part VIII of subchapter B of chapter 1 is amended by striking the items relating to sections 244 and 247.

(B) Paragraph (5) of section 172(d) is amended to read as follows:

''(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED.—The deductions allowed by section 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''.

(C) Paragraph (1) of section 243(c) is amended to read as follows:

''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''.

(D) Section 243(d) is amended by striking paragraph (4).

(E) Section 246 is amended—

(i) by striking '', 244,'' in subsection (a)(1),

(ii) in subsection (b)(1)—

(I) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears and inserting ''section 243(a)(1),'',

(II) by striking ''244(a),'' the second place it appears therein, and

(III) by striking ''subsection (a) or (b) of section 245, and 247,'' and inserting ''and subsection (a) or (b) of section 245,'', and

(iii) by striking '', 244,'' in subsection (c)(1).

(F) Section 246A is amended by striking '', 244,'' both places it appears in subsections (a) and (e).

(G) Sections 263(g)(2)(B)(iii), 277(a), 301(e)(2), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 815(c)(2)(A)(iii), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

(H) Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

(I) Section 810(c)(2)(B) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

(30) ORGANIZATION EXPENSES.—Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

(31) BOND REPURCHASE PREMIUM.—Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

(32) AMOUNT OF GAIN WHERE LOSS PREVIOUSLY DISALLOWED.—Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

(33) ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 269(a) are each amended by striking ''or acquired on or after October 8, 1940,''.

(34) INTEREST ON INDEBTEDNESS INCURRED BY CORPORATIONS TO ACQUIRE STOCK OR ASSETS OF ANOTHER CORPORATION.—Section 279 is amended—

(A) by striking ''after December 31, 1967,'' in subsection (a)(2),

(B) by striking ''after October 9, 1969,'' in subsection (b),

(C) by striking ''after October 9, 1969, and'' in subsection (d)(5), and

(D) by striking subsection (i) and by redesignating subsection (j) as subsection (i).

(35) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

(36) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.—Section 409 is amended by striking subsections (a), (g), and (q).

(37) FUNDING STANDARDS.—Section 412(m)(4) is amended—

(A) by striking ''the applicable percentage'' in subparagraph (A) and inserting ''25 percent'', and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(38) RETIREE HEALTH ACCOUNTS.—Section 420 is amended—

(A) by striking paragraph (4) in subsection (b) and by redesignating paragraph (5) as paragraph (4), and

(B) by amending paragraph (2) of subsection (c) to read as follows:

''(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).''.

(39) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) is amended by striking ''after December 31, 1963,''.

(40) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended—

(A) by striking ''any farming syndicate (as defined in subsection (c))'' both places it appears in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and

(B) by striking subsection (g).

(41) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—

(A) Paragraph (3) of section 465(c) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''.

(B) Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

(42) NUCLEAR DECOMMISSIONING COSTS.—Section 468A(e)(2) is amended—

(A) by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and

(B) by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(43) PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.—

(A) Section 469 is amended by striking subsection (m).

(B) Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(44) ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.—Section 481(b)(3) is amended by striking subparagraph (C).

(45) EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.—Section 501 is amended by striking subsection (p).

(46) REQUIREMENTS FOR EXEMPTION.—

(A) Section 503(a)(1) is amended to read as follows:

''(1) GENERAL RULE.—An organization described in paragraph (17) or (18) of section 501(a) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.''.

(B) Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''.

(C) Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

(47) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT.—Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

(48) INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.—Section 692(a)(1) is amended by striking ''after June 24, 1950''.

(49) INSURANCE COMPANY TAXABLE INCOME.—

(A) Section 832(e) is amended by striking ''of taxable years beginning after December 31, 1966,''.

(B) Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

(50) TAX ON NONRESIDENT ALIEN INDIVIDUALS.—Subparagraph (B) of section 871(a)(1) is amended to read as follows:

''(B) gains described in subsection (b) or (c) of section 631,''.

(51) PROPERTY ON WHICH LESSEE HAS MADE IMPROVEMENTS.—Section 1019 is amended by striking the last sentence.

(52) INVOLUNTARY CONVERSION.—Section 1033 is amended by striking subsection (j) and by redesignating subsection (k) as subsection (j).

(53) PROPERTY ACQUIRED DURING AFFILIATION.—Section 1051 is repealed and the table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1051.

(54) HOLDING PERIOD OF PROPERTY.—

(A) Paragraph (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''.

(B) Paragraph (7) of section 1223 is amended by striking the last sentence.

(C) Paragraph (9) of section 1223 is repealed.

(55) PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.—Subparagraph (A) of section 1231(c)(2) is amended by striking ''beginning after December 31, 1981''.

(56) SALE OR EXCHANGE OF PATENTS.—Section 1235 is amended—

(A) by striking subsection (c) and by redesignating subsections (d) and (e) as (c) and (d), respectively, and

(B) by striking ''(d)'' in subsection (b) and inserting ''(c)''.

(57) DEALERS IN SECURITIES.—Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

(58) SALE OF PATENTS.—Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

(59) GAIN FROM DISPOSITION OF FARM LAND.—Paragraph (1) of section 1252(a) is amended by striking ''after December 31, 1969,'' both places it appears.

(60) TREATMENT OF AMOUNTS RECEIVED ON RETIREMENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.—Subsection (c) of section 1271 is amended to read as follows:

''(c) SPECIAL RULE FOR CERTAIN OBLIGATIONS WITH RESPECT TO WHICH ORIGINAL ISSUE DISCOUNT NOT CURRENTLY INCLUDIBLE.—

''(1) IN GENERAL.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

''(A) an amount equal to the original issue discount, or

''(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

''(2) SUBSECTION (a)(2)(A) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

''(3) CROSS REFERENCE.—

''For current inclusion of original issue discount, see section 1272.''.

(61) AMOUNT AND METHOD OF ADJUSTMENT.—Section 1314 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(62) ELECTION; REVOCATION; TERMINATION.—Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''.

(63) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''.

(64) HOSPITAL INSURANCE.—Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''.

(65) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

(66) WITHHOLDING OF TAX ON NONRESIDENT ALIENS.—The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''.

(67) AFFILIATED GROUP DEFINED.—Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

(68) DISALLOWANCE OF THE BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.—

(A) Subsection (a) of section 1551 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Section 1551(b) is amended—

(i) by striking ''or (2)'' in paragraph (1), and

(ii) by striking ''(a)(3)'' in paragraph (2) and inserting ''(a)(2)''.

(69) DEFINITION OF WAGES.—Section 3121(b) is amended by striking paragraph (17).

(70) CREDITS AGAINST TAX.—

(A) Paragraph (4) of section 3302(f) is amended by striking ''subsection—'' and all that follows through ''(A) IN GENERAL.—'', by striking subparagraph (B), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving the text of such subparagraphs (as so redesignated) 2 ems to the left.

(B) Paragraph (5) of section 3302(f) is amended by striking subparagraphs (D) and by redesignating subparagraph (E) as subparagraph (D).

(71) DOMESTIC SERVICE EMPLOYMENT TAXES.—Section 3510(b) is amended by striking paragraph (4).

(72) TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Section 4042(b)(2)(A) is amended to read as follows:

''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''.

(73) TRANSPORTATION BY AIR.—Section 4261(e) is amended—

(A) in paragraph (1) by striking subparagraph (C), and

(B) by striking paragraph (5).

(74) TAXES ON FAILURE TO DISTRIBUTE INCOME.—Section 4942 is amended—

(A) by striking subsection (f)(2)(D),

(B) in subsection (g)(2)(A) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'',

(C) in subsection (g) by striking paragraph (4), and

(D) in subsection (i)(2) by striking ''beginning after December 31, 1969, and''.

(75) TAXES ON TAXABLE EXPENDITURES.—Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

(76) RETURNS.—Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''.

(77) INFORMATION RETURNS.—Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

(78) ABATEMENTS.—Section 6404(f) is amended by striking paragraph (3).

(79) FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.—Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

(80) RETIREMENT.—Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

(81) ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF JUDGES.—

(A) Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939'' and by striking ''or pursuant to section 1106(d) of the Internal Revenue Code of 1939''.

(B) Subsection (g) of section 7448 is amended by striking ''or other than pursuant to section 1106 of the Internal Revenue Code of 1939''.

(C) Subsection (j)(1) and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

(82) MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.—Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any nonqualified withdrawal shall be determined''.

(83) VALUATION TABLES.—Paragraph (3) of section 7520(c) is amended—

(A) by striking ''Not later than December 31, 1989, the'' and inserting ''The'', and

(B) by striking ''thereafter'' in the last sentence thereof.

(84) ADMINISTRATION AND COLLECTION OF TAXES IN POSSESSIONS.—Section 7651 is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(85) DEFINITION OF EMPLOYEE.—(A) Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as otherwise provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of enactment of this Act.

(2) SAVINGS PROVISION.—If—

(A) any provision amended or repealed by subsection (a) applied to—

(i) any transaction occurring before the date of the enactment of this Act,

(ii) any property acquired before such date of enactment, or

(iii) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(B) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by subsection (a)) affect the liability for tax for periods ending after such date of enactment, nothing in the amendments made by subsection (a) shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

TAX ADMINISTRATION GOOD GOVERNMENT ACT

INTRODUCED APRIL 10, 2003

I. IMPROVE TAX ADMINISTRATION AND ESTABLISH TAXPAYER SAFEGUARDS

Collection

Waiver of user fee for installment agreements using automated withdrawals. The IRS imposes a $43 user fee on taxpayers entering into an installment agreement. The proposal would waive the user fee if the taxpayer agrees to automated withdrawal of installment payments from a bank account. This proposal will help facilitate collection through automated withdrawals.

Authorize partial pay installment agreements. The proposal restores authority that the IRS had prior to 1998 to allow IRS to enter into installment agreements with taxpayers that want to resolve their tax liability but cannot afford to make payments large enough to fully pay the liability at the end of the term of the installment agreement. The proposal would permit the collection of taxes from cases that are otherwise placed in the currently not collectible inventory.

Terminate installment agreements for failure to file returns and failure to make tax deposits. The proposal would stop the downward spiral where taxpayers owe more and the Government collects less. Although a significant number of taxpayers violate the terms of their installment agreements by failing to timely file their tax returns or make required Federal tax deposits, the IRS is not permitted to terminate installment agreements for these reasons.

Remove $50,000 threshold requirement for office of chief counsel review of offers in compromise—IRC section 7122(b). The proposal would remove the dollar threshold and give IRS discretion in determining when a Chief Counsel opinion is necessary. IRS attorneys are presently required to review offers where the tax assessed, including penalties and interest, exceeds $50,000. As a practical matter, IRS lawyer offer little in the way of review and often contribute to the delay in processing OICs.

Seven-day threshold on tolling of statute of limitations during National Taxpayer Advocate review. The proposal provides additional time, without tolling the statute of limitations, for review by the National Taxpayer Advocate for taxpayer assistance orders.

Increase Penalty for Bad Checks. Proposal would increase penalty for bad checks to $20 or 2 % of amount over $1,000.

Allow the Financial Management Service to Retain Transaction Fees from Levied Amounts. Proposal would allow FMS to retain directly a portion of the levied funds as payment of FMS fees. A delinquent taxpayer, however, would receive full credit for the amount levied upon (i.e., the amount credited to a taxpayer's account would not be reduced by FMS's fee). The IRS pays FMS fees out of its own appropriations. The proposal would alter internal government accounting and allow the use of appropriated funds to administer the tax system.

Elimination or Restriction on Offsetting Refunds from former residents. The proposal would allow States to offset Federal tax refunds owed by former residents. In 1998, Congress authorized the state refund offset program. However, the provision did not authorize states to offset Federal tax refunds for State tax debts owed by former residents who had subsequently moved to another State. Former residents have the same safeguards as residents in these situations and there is strong precedence that clearly gives States authority to impose and collect taxes on former residents.

Processing and Personnel

Explanation of Statute of Limitations and Consequences of Failure to Timely File. The proposal would require the IRS to provide taxpayers with an explanation of the consequences of failing to timely file refund claims.

Disclosure of tax information to facilitate combined employment tax reporting. The proposal would expand and make permanent the disclosure authority of the IRS to permit disclosures of name, address, taxpayer identification number, and signature to any State entity for purposes of carrying out a combined federal and state employment tax reporting program. Under current law, no tax information may be furnished by the Internal Revenue Service to another agency except as permitted under section 6103 which requires the other agency to establish procedural safeguards satisfactory to the IRS. A pilot program was established in 1997 in the State of Montana to assess the feasibility and desirability of expanding combined reporting. Reports from Montana were very positive about the program.

Expansion of declaratory judgment remedy to tax-exempt organizations. The proposal would extend declaratory judgment procedures similar to those currently available only to charities under section 7428 to other section 501(c) determinations. The proposal would limit jurisdiction over controversies involving such determinations to the United States Tax Court. In addition, the proposal would modify the present-law declaratory judgment procedures to provide that an organization is deemed to have exhausted its administrative remedies under the declaratory judgment procedures at the expiration of (1) 270 days after the date on which the request for a determination was made, or (2) in the case of a failure by any office of the IRS to make a determination (other than the office responsible for initial determinations with respect to the issue), 450 days after the date on which the request for a determination was made. The proposal would also require the organization to take, in a timely manner, all reasonable steps to secure such determination.

Amendment to Treasury auction reforms. The proposal would permit earlier disclosure upon the release by the Secretary of the minutes of the meeting. Under current law, members of the Treasury Borrowing Advisory Committee are prohibited from disclosing anything relating to the securities to be auctioned in a midquarter refunding by the Secretary until the Secretary makes a public announcement of the refunding.

Revisions relating to termination of employment of IRS employee misconduct. Proposal would modify section 1203 by removing the late filing of refund returns from the list of violations and removing employee versus employee acts (i.e. for violation of an employee's rather than a taxpayer's Constitutional or civil rights) from the list of violations.

IRS Oversight Board approval of use of critical pay authority. The proposal would require IRS Oversight Board review and approve the use of critical pay authority. Critical pay allows the IRS to hire employees critical to the mission of the IRS as well as allow the IRS to hire up to 40 individuals for four year terms under streamlined procedures.

Low-income taxpayer clinics. The proposal would increase the authorization for low-income taxpayer controversy clinics to $10 million and authorize a similar grant program for low-income taxpayer preparation clinics for $10 million. The proposal would specify that grants may not be used for any purpose other than those specified in the Code (this restriction would be inapplicable to funds from other sources). The proposal would also authorize the IRS to promote the benefits and encourage the use of low-income taxpayer clinics.

Enrolled agents. The proposal would add a new section to the Code permitting the Secretary to prescribe regulations to regulate the conduct of enrolled agents in regard to their practice before the IRS and to permit enrolled agents meeting the Secretary's qualifications to use the credentials or designation ''enrolled agent'', ''EA'', or ''E.A.''.

Establishment of disaster response team. Proposal would require the IRS to establish a permanent Disaster Response Team which, in coordination with the Federal Emergency Management Agency, is to assist taxpayers in clarifying and resolving tax matters associated with a Presidentially declared disaster or a terroristic or military action. The Team is to be staffed by IRS employees with a relevant knowledge and experience, including a representative from the Office of the Taxpayer Advocate.

Accelerated tax refunds. Proposal would require the Secretary of Treasury to study and report to the tax writing committees on options to accelerate tax refunds for taxpayers who maintain the same filing characteristics and elect the direct option for any refund.

Study on clarifying record-keeping responsibilities. The proposal would require the Secretary of the Treasury to study the scope of records required to be maintained by taxpayers, the utility of requiring taxpayers to maintain records indefinitely, the taxpayer burden incurred by such requirement given the necessity to upgrade technological storage for outdated records, the number of negotiated records retention agreements requested by taxpayers and the number entered into by the IRS, and proposals regarding taxpayer record-keeping. Under current law, every person liable for any tax imposed by the Code, or for any collection thereof, shall keep such records as the Secretary of the Treasury may from time to time prescribe.

Streamline National Taxpayer Advocate Annual Reports. Each year, the National Taxpayer Advocate is required to issue two reports to Congress: (1) an annual report on

objectives of the Advocate for the year due June 30 and (2) an annual report on the Advocate's activities including the 20 most serious problems confronting taxpayers. The Advocate's office spends an enormous amount of time and effort preparing these reports. The proposal would streamline the reporting process by requiring the Advocate to issue only one report each year.

Penalty on failure to report interests in foreign financial accounts. The proposal would establish a $5,000 penalty for non-willful failure to report interest in foreign bank accounts. Under present law there is only a penalty of $25,000 for willful failures.

Repeal of personal holding company tax. The proposal would repeal the personal holding company (PHC) tax. Subsequent changes in the tax code resulted in the provisions ineffectiveness as originally intended.

II. SIMPLIFICATION OF INTEREST AND PENALTY REGIMES

Individual estimated tax. The proposal simplifies the individual estmated tax penalty including, increase the penalty threshold for individuals to $2,000 from $1,000; apply one interest rate per estimated tax underpayment; and adopt 365-day year.

Corporate estimated tax. The proposal simplifies the corporate estimated tax penalty by increasing the exception for small amount of tax shown on the return from less than $500 to less than $1,000.

Increase in large corporation threshold for estimated tax payments. The proposal simplifies the corporate estimated tax by expanding the safe harbor exception used by small corporations by increasing the threshold from $1 million to $1.5 million of taxable income.

Expansion of interest abatement. The proposal would: (1) expand the circumstances in which interest may be abated to include periods attributable to any unreasonable IRS error or delay and (2) allow the abatement of interest to the extent interest is attributable to the taxpayer's reliance on written statement by the IRS.

Deposits made to stop the running of interest. Proposal would permit deposits to be made to an interest bearing account within Treasury to cover tax underpayments related to issues potentially subject to dispute with the IRS.

Freeze provision regarding suspension of interest where Secretary fails to contact taxpayer. The proposal would repeal current law which requires the suspension of interest on taxes owed until 21 days after the IRS sends a notice of deficiency. The suspension is triggered if the IRS fails to contact the taxpayer within 1 year for taxable years after January 1, 2004 or 18 months for taxable years before January 1, 2004. The proposal is unnecessary with expanded interest abatement.

Expansion of interest netting. Applies interest netting rules without regard to the 45-day period in which the Secretary may refund an overpayment of tax without the payment of interest.

Clarification of application of Federal tax deposit penalty. The proposal would clarify that the 10 percent penalty rate only applies in cases where the failure to deposit extends for more than 15 days.

Frivolous tax submissions. The proposal would increase the penalty for frivolous tax returns from $500 to $5,000. In addition, the proposal would permit the IRS to dismiss requests for Collection Due Process hearings, installment agreements, offers-in-compromise, and taxpayer assistance orders if they are based on frivolous arguments or are intended to delay or impede tax administration. Individuals submitting such requests are subject to a $5,000 penalty for repeat behavior or failure to withdraw the request after being given the opportunity to do so.

III. U.S. TAX COURT MODERNIZATION

Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's underlying tax liability does not relate to income taxes or a type of tax over which the Tax Court normally has deficiency jurisdiction, there is no opportunity for Tax Court review and the taxpayer must file in a District Court to obtain review. This provision consolidates judicial review of collection due process activity in the Tax Court.

Authority for special trial judges to hear and decide certain employment status cases. This provision clarifies that the Tax Court may authorize its special trial judges to enter decisions in employment status cases that are subject to small case proceedings under section 7436(c).

Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to asset an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. This provision confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as District Court and the Court of Federal Claims.

Tax Court filing fee in all cases commenced by filing petition. This provision clarifies, in keeping with current Tax Court procedure, that the Tax Court is authorized to impose a $60 filing fee for all cases commenced by petition. The proposal would eliminate the need to amend section 7451 each time the Tax Court is granted new jurisdiction.

Amendments to appoint employees. Currently, the Tax Court has to go to the executive branch, the Office of Personnel Management, to change a position. It is inappropriate to require the Tax Court to seek permission from the executive since that branch is a party (Commissioner of Internal Revenue) before the Tax Court. This change would allow the Tax Court to be independent in fact and perception from the Executive Branch while ensuring that basic employee rights, protections, and remedies are retained or required in an appropriate way (e.g., whistleblower protection, civil rights, merit system principles, etc.).

Expanded use of Tax Court practice fee for pro se taxpayers. The Tax Court is authorized to charge practitioners a fee of up to $30 per year and to use these fees to pursue disciplinary matters. The provision expands use of these fees to provide services to pro se taxpayers. Fees could be used for education programs for pro se taxpayers.

Annuities for survivors of Tax Court judges who are assassinated. The reality is that many people do not like to pay taxes. there is as much risk of a Tax Court judge being assassinated as any other Federal judge. The proposal would conform the treatment of Tax Court judges to District Court judges.

Cost-of-living adjustments for Tax Court judicial survivor annuities. All Federal employees have this provision except the Tax Court. Survivors of Tax Court judges are subject to an obsolete method of indexing.

Life insurance coverage for Tax Court judges. This simply codifies current Office of Personnel Management interpretation, as was previously done for District Court judges.

Cost of life insurance coverage for Tax Court judges age 65 or over. Congress established the Tax Court in 1969 and required that Tax Court judges receive the same compensation as District Court judges. The District Court judges were given this benefit to ensure that there was no diminution of their compensation (as required by the Constitution). This provision is in keeping with the original intent of Congress.

Modification of timing of lump-sum payment of judge's accrued annual leave. District Court judges are allowed to receive a lump-sum payment due to the life-time tenure of Article III judges. Tax Court judges, while they have a 15 year term, effectively have a life-time term because they are always subject to recall.

Participation of Tax Court judges in the Thrift Savings Plan. The proposal would allow Tax Court judges to participate in Thrift Savings Plan. Currently, only 19 federal government employees are left out of the Thrift Savings Plan (i.e., Tax Court judges).

Exemption of teaching compensation of retired judges for limitation on outside earned income. After retirement, Tax Court judges should have the same ability to teach as District Court judges.

General provisions relating to magistrate judges of the Tax Court. ''Magistrate'' is more recognizable to the American public because it is the term used by Article III courts. The provision changes the term ''Special Trial Judge'' to ''Magistrate Judge of the United States Tax Court'' and provides for alignment of term of office and removal applicable to District Court magistrate judges.

Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court. This section gives Magistrates/Special Trial Judges the same advantages as Tax Court judges, thus ensuring a greater pool of participants in the fund.

Retirement and annuity program for magistrate judges. A retirement and annuity program more aligned with District Court Magistrates and the Tax Court judges is key for attracting and retaining qualified judges.

Incumbent magistrate judges of the Tax Court. The provision provides transition rules similar to those given to the District Court magistrate judges.

Provisions for recall. Article III judges are ''self-recalling'' (i.e., they decide for themselves whether they are recalled or not). In contrast, Tax Court judges are subject to provisions that authorize mandatory recall by the Chief Judge. These provisions authorize the recall of Magistrates/Special Trial judges in a manner similar to those now applicable to the regular judges of the Court.

IV. CONFIDENTIALITY AND DISCLOSURE REFORMS

Clarification of definition of church tax inquiry. The proposal would clarify that the present-law church tax inquiry procedures do not apply to contacts made by the IRS for the purpose of educating churches with respect to the law governing tax-exempt organizations. For example, the proposal clarifies that the IRS does not violate the church tax inquiry procedures when written materials are provided to a church or churches for the purpose of educating such church or churches with respect to the types of activities that are not permissible under section 501(c)(3).

Collection activities with respect to joint return disclosable to either spouse based on oral request. The proposal would eliminate the requirement for former spouses to make a written request for disclosure of collection activities with respect to a joint return. Under present law, section 6103(e)(7) permits the IRS to disclose return information to the same persons who may have access to a return under the other provisions of section 6103(e), thus either spouse may obtain return information regarding a joint return upon oral request.

Taxpayer representatives not subject to examination on sole basis of representation of taxpayers. The proposal would clarify that

an IRS employee conducting an examination of a taxpayer is not authorized to inspect a taxpayer representative's return or return information solely on the basis of the representative relationship to the taxpayer. Under the proposal, the supervisor of the IRS employee would be required to approve such inspection after making a determination that other grounds justified such an inspection. The proposal would not affect the ability of employees of the IRS Director of Professional Responsibility, or other employees whose assigned duties concern the regulation of practice before the IRS, to access returns and return information of a representative.

Prohibition of disclosure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise. The proposal would prohibit the disclosure of the taxpayer identification number as part of the publicly available summaries of accepted offers in compromise.

Compliance by contractors with confidentiality safeguards. The proposal would require that a State or Federal agency conduct on-site reviews of all of its contractors receiving Federal returns and return information every three years. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the proposal, the State or Federal agency would be required to submit a report of its findings to the IRS and certify annually that all contractors are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information.

Higher standards for requests for and consents to disclosure. The proposal would render invalid a consent that does not designate a recipient or is not dated at the time of execution. The person submitting the consent to the IRS would be required to verify under penalties of perjury that the form was complete and dated at the time it was signed by the taxpayer. Inspection or disclosure of a return or return information pursuant to an invalid consent would be unauthorized under section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7431, and criminal penalties under section 7213 or 7213A for willful unauthorized disclosure or inspection.

Civil damages for unauthorized inspection or disclosure. The proposal would require the IRS to notify a taxpayer at the point of proposed administrative action as to disciplinary or adverse action against an employee arising from the unauthorized inspection or disclosure of the taxpayer's return or return information.

Expanded disclosure in emergency circumstances. The proposal would permit disclosure to local law enforcement authorities emergency situations including suicide threats.

Disclosure of taxpayer identity for tax refund purposes.—On April 15, 2002, about 1.7 million people who did not file their 1998 income tax return who lose more than $2.3 billion in tax refunds. When the IRS is unable to find a taxpayer due a refund, present law provides that it may use ''the press or other media'' to notify the taxpayer of the refund. The IRS believes the current statutory framework in Section 6103(m) does not permit disclosure via the Internet. The proposal would allow the IRS to use any means of ''mass communicating,'' including the Internet to notify a taxpayer of an undelivered refund.

Disclosure to State officials of proposed actions related to section 501(c) organizations. The proposal provides that upon written request by an appropriate State officer, the Secretary may disclose: (1) a notice of proposed refusal to recognize an organization as a section 501(c)(3) organization; (2) a notice of proposed revocation of tax-exemption of a section 501(c)(3) organization; (3) the issuance of a proposed deficiency of tax imposed under section 507, chapter 41, or chapter 42; (4) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as section 501(c)(3) organizations; and (5) returns and return information of organizations with respect to which information has been disclosed under (1) through (4) above. Disclosure or inspection is permitted for the purpose of, and only to the extent necessary in, the administration of State laws regulating section 501(c)(3) organizations, such as laws regulating tax-exempt status, charitable trusts, charitable solicitation, and fraud.

Treatment of public records. The proposal clarifies that public record data (e.g., press releases re criminal cases) does not retain 6103 protections in the files of the IRS.

Investigative disclosures. The proposal permits the IRS Criminal Investigation agents to identify themselves, organizational affiliation, and criminal nature of investigation when contacting third parties in writing or in person.

TIN matching. The proposal permits taxpayer identification number (TIN) verification by persons required to provide the information to the IRS (limited to whether information matches) to permit early error resolution and enhance compliance. Under present law, over 30 million information returns are received by the IRS from payors that contain missing or incorrect name and TIN information. However, the IRS is only permitted to disclose the error to the payor at the point at which the payment is subject to backup withholding.

Form 8300 disclosures. The proposal ensures that the Form 8300 (for reporting transactions in excess of $10,000) can be disclosed to law enforcement in the same manner as financial reporting documents required under the Bank Secrecy Act (under Title 31).

V. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS

1. Adjustments in tax tables so that inflation will not result in tax increases. Paragraph (7) of section 1(f) is amended to read as follows: ''(7) Special rule for certain brackets—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent bracket begins or at which the 39.6 rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''

2. Reduced capital gain rates for qualified 5-year gain. Paragraph (2) of section 1(h) is amended by striking ''In the case of taxable years beginning after December 31, 2000, the'' and inserting ''The''.

3. Credit for producing fuel from nonconventional source. Section 29 is amended by striking subsection (e).

4. Earned income credit. Paragraph (1) of section 32(b) is amended by striking subparagraphs (B) and (C) and by striking ''(A) In General. In the case of taxable years beginning after 1995:''.

5. General business credits. Subsection (d) of section 38 is amended by striking paragraph (3).

6. Carryback and carryforward of unused credits. Section 39 is amended by striking subsection (d).

7. Adjustments based on adjusted current earnings. Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

8. Items of tax preference; Depletion. Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

9. Intangible drilling costs. Clause (i) of section 57(a)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''. Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993''.

10. Annuities; certain proceeds of endowment and life insurance contracts. Paragraph (4) of section 72(c) is amended by striking ''under the contract'' and all that follows and inserting'' under the contract.'' Paragraph (3) of section 72(g) is amended by striking ''January 1, 1954, or''.

11. Accident and health plans. Section 105(f) is amended by striking ''or (d)''.

12. Flexible spending arrangements. Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

13. Certain combat zone compensation of members of the Armed Forces. Subsection (c) of section 112 is amended by striking ''(after June 24, 1950)'' in paragraph (2), and striking ''such zone,'' and all that follows in paragraph (3) and inserting ''such zone.''

14. Principal residence. Section 121(b)(3) is amended by striking subparagraph (B).

15. Certain reduced uniformed services retirement pay. Section 112(b)(1) is amended by striking ''after December 31, 1965,''.

16. Great plains conservation program. Section 126(a) is amended by striking paragraph (6).

17. Mortgage revenue bonds—Federal disaster area modifications. Eliminate special qualified mortgage bond rules or residences located in Federal disaster areas. (utility expired January 1, 1999).

18. Interim authority for governors regarding allocation of private activity bond volume limits. Eliminate temporary gubernatorial authority to allocate the volume limit.

19. Treble damage payments under the antitrust law. Section 162(g) is amended by striking the last sentence.

20. State legislators' travel expenses away from home. Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

21. Interest. Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) of subsection (h). Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii) respectively.

22. Charitable, etc., contributions and gifts. Section 170 is amended by striking subsection (k).

23. Amortizable bond premium. Subparagraph (B) of section 171(b)(1) is amended to read as follows:

''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), and''

24. Net operating loss carrybacks and carryovers. Section 172 is amended by striking subparagraph (D) of subsection (b)(1), subsection (g), and subparagraph (F) of the paragraph (h)(2).

25. Research and experimental expenditures. Subparagraph (A) of section 174(a)(2) is amended to read as follows: ''(A) Without

consent.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (l) are paid or incurred.''

26. Amortization of certain research and experimental expenditures. Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

27. Soil and water conservation expenditures. Paragraph (1) of section 175(d) is amended to read as follows: ''(1) Without consent.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''

28. Activities not engaged in for profit. Section 183(e)(1) is amended by striking the last sentence.

29. Dividends received on certain preferred stock; and Dividends paid on certain preferred stock of public utilities. Sections 244 and 247 are repealed. Paragraph (5) of section 172(d) is amended to read as follows:

''(5) Computation of deduction for dividends received. The deductions allowed by section 243 and 245 shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''

Paragraph (1) of section 243(c) is amended to read as follows:

''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''

Section 243(d) is amended by striking paragraph (4).

Section 246 is amended—

(i) by striking '', 244,'' in subsection (a)(1),

(ii) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears in subsection (b)(1) and inserting ''section 243(a)(1),'' and by striking ''244(a),'' the second place it appears therein, and

(iii) by striking in subsection (c)(1).

Section 246A is amended by striking ''244'' in subsections (a) and (e).

Sections 277(a), 301(e), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

Section 810(c)(2) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

30. Organization expenses. Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

31. Bond repurchase premium. Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

32. Amount of gain where loss previously disallowed. Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

33. Acquisitions made to evade or avoid income tax. Paragraphs (1) and (2) of section 269 are each amended by striking ''or acquired on or after October 8, 1940,''.

34. Interest on indebtedness incurred by corporations to acquire stock or assets of another corporation. Section 279 is amended—(A) by striking ''after December 31, 1967,'' in subsection (a)(2), (B) by striking ''after October 9, 1969,'' in subsections (b), (C) by striking ''after October 9, 1969, and'', and (D) by striking subsection (i) and redesignating subsection (j) as subsection (i).

35. Special rules relating to corporate preference items. Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

36. Qualifications for tax credit employee stock ownership plan. Section 409 is amended by striking subsections (a), (g), and (p).

37. Funding standards. Section 412(m)(4) is amended by striking ''the applicable percentage'' in subparagraph (A) and by inserting ''25 percent'', and by striking subparagraph (C).

38. Retiree health accounts. Section 420 is amended by striking subsections (b)(4) and (c)(2)(B).

39. Employee stock purchase plans. Section 423(a) is amended by striking ''after December 31, 1963,''.

40. Limitation on deductions for certain farming. Section 464 is amended by striking ''any farming syndicate (as defined in subsection (c))'' in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and by striking subsections (c) and (g).

41. Deductions limited to amount at risk. Paragraph (3) of section 465(c)(3) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''. Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

42. Nuclear decommissioning costs. Section 468A(e)(2) is amended by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and by striking subparagraph (B).

43. Passive activity losses and credits limited. Section 469 is amended by striking subsection (m). Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

44. Adjustments required by changes in method of accounting. Section 481(b)(3) is amended by striking subparagraph (C).

45. Exemption from tax on corporations, certain trusts, etc. Section 501 is amended by striking subsection (p).

46. Requirements for exemption. Section 503(a)(1) is amended to read as follows: ''(1) General rule.—An organization described in paragraph (17) or (18) of section 501(a) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.'' Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''. Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

47. Amounts received by surviving annuitant under joint and survivor annuity contract. Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

48. Income taxes of members of Armed Forces on death. Section 692(a)(1) is amended by striking ''after June 24, 1950''.

49. Insurance company taxable income. Section 832(e)(1) is amended by striking ''of taxable years beginning after December 31, 1966,'' Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

50. Tax on nonresident alien individuals. Subparagraph (B) of section 871(a)(1) is amended to read as follows: ''(B) gains described in section 631(b) or (c),''.

51. Property on which lessee has made improvements. Section 1019 is amended by striking the last sentence.

52. Involuntary conversion. Section 1033 is amended by striking subsection (j).

53. Property acquired during affiliation. Section 1051 is repealed.

54. Holding period of property. Paragraphs (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''. Paragraph (7) of section 1223 is amended by striking the last sentence. Paragraph (9) of section 1223 is repealed.

55. Property used in the trade or business and involuntary conversions. Paragraph (2) of section 1231(c) is amended by striking ''beginning after December 31, 1981''.

56. Sale or exchange of patents. Section 1235 is amended by striking subsection (c) and redesignating subsections (d) and (e) as (c) and (d) respectively.

57. Dealers in securities. Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

58. Sale of patents. Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

59. Gain from disposition of farm land. Subparagraph (a) of section 1252 is amended by striking ''after December 31, 1969,''.

60. Treatment of amounts received on retirement or sale or exchange of debt instruments. Subsection (c) of section 1271 is amended by striking paragraph (1).

61. Amount and method of adjustment. Section 1314 is amended by striking subsection (d).

62. Election; revocation; termination. Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''

63. Old-age, survivors, and disability insurance. Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''

64. Hospital insurance. Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''

65. Ministers, members of religious orders, and Christian Science practitioners. Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

66. Withholding of tax on nonresident aliens. The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking the ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''

67. Affiliated group defined. Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

68. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit. Subsection (a) of section 1551 is amended—

(1) by striking paragraph (1) and designating paragraphs (2) and (3) as (1) and (2) respectively, and

(2) by striking ''(2) or (3)'' and inserting ''(1) or (2)''.

Subsection (b) of section 1551 is amended by striking ''or (2)''.

69. Definition of wages. Section 3121(b) is amended by striking paragraph (17).

70. Credits against tax. Section 3302(f) is amended by striking paragraphs (4)(B) and (5)(D).

71. Domestic service employment taxes. Section 3510(b) is amended by striking paragraph (4).

72. Tax on fuel used in commercial transportation on inland waterways. Section 4042(b)(2)(A) is amended to read as follows: ''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''

73. Transportation by air. Section 4261(e) is amended by striking paragraphs (1)(C) and (5).

74. Taxes on failure to distribute income. Section 4942 is amended—

(1) by striking subsection (f)(2)(D),

(2) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'' in subsection (g)(2)(A),

(3) by striking subsection (g)(4), and

(4) by striking ''after December 31, 1969, and'' in subsection (i)(2).

75. Taxes on taxable expenditures. Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

76. Returns. Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''

77. Information returns. Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

78. Abatements. Section 6404(f) is amended by striking paragraph (3).

79. Failure by corporation to pay estimated income tax. Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

80. Retirement. Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

81. Annuities to surviving spouses and dependent children of judges. Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939''.

Subsectin (g) of section 7448 is amended by striking ''or other than pursuant to section 106 of the Internal Revenue Code of 1939''.

Subsection (j)(1)(B) and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

82. Merchant Marine capital construction funds. Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any nonqualified withdrawal shall be determined''.

83. Valuation tables. Paragraph (3) of section 7520(c) is amended by striking ''not later than December 31, 1989, the'' and inserting ''The''.

84. Administration and collection of taxes in possessions. Section 7561 is amended by striking paragraph (4).

85. Definition of employee. Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

Effective Date.—

General Rule.—Except as otherwise provided in this part, the amendments made by this part shall take effect of the date of enactment of this Act.

Savings Provision.—If

(1) any provision amended or repealed by this part applied to—

(a) any transaction occurring before the date of the enactment of this Act,

(b) any property acquired before such date of enactment, or

(c) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect the liability for tax for periods ending after such date of enactment, nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

By Mr. BREAUX (for himself, Mr. CHAFEE, Mr. BINGAMAN, Ms. LANDRIEU, Mr. LIEBERMAN, Mrs. CLINTON, Mr. MILLER, and Mr. GRAHAM of Florida):

S. 883. A bill to amend title XIX of the Social Security Act to revise and simplify the transitional medical assistance (TMA) program; to the Committee on Finance.

Mr. BREAUX. Mr. President, I ask unamimous 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. 883

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 ''Transitional Medical Assistance Improvement Act of 2003''.

SEC. 2. REVISION AND SIMPLIFICATION OF THE TRANSITIONAL MEDICAL ASSISTANCE PROGRAM (TMA).

(a) OPTION OF CONTINUOUS ELIGIBILITY FOR 12 MONTHS; OPTION OF CONTINUING COVERAGE FOR UP TO AN ADDITIONAL YEAR.—

(1) OPTION OF CONTINUOUS ELIGIBILITY FOR 12 MONTHS BY MAKING REPORTING REQUIREMENTS OPTIONAL.—Section 1925(b) of the Social Security Act (42 U.S.C. 1396r–6(b)) is amended—

(A) in paragraph (1), by inserting '', at the option of a State,'' after ''and which'';

(B) in paragraph (2)(A), by inserting ''Subject to subparagraph (C):'' after ''(A) NOTICES.—'';

(C) in paragraph (2)(B), by inserting ''Subject to subparagraph (C):'' after ''(B) REPORTING REQUIREMENTS.—'';

(D) by adding at the end the following new subparagraph:

''(C) STATE OPTION TO WAIVE NOTICE AND REPORTING REQUIREMENTS.—A State may waive some or all of the reporting requirements under clauses (i) and (ii) of subparagraph (B). Insofar as it waives such a reporting requirement, the State need not provide for a notice under subparagraph (A) relating to such requirement.''; and

(E) in paragraph (3)(A)(iii), by inserting ''the State has not waived under paragraph (2)(C) the reporting requirement with respect to such month under paragraph (2)(B) and if'' after ''6-month period if''.

(2) STATE OPTION TO EXTEND ELIGIBILITY FOR LOW-INCOME INDIVIDUALS FOR UP TO 12 ADDITIONAL MONTHS.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended—

(A) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(B) by inserting after subsection (b) the following new subsection:

''(c) STATE OPTION OF UP TO 12 MONTHS OF ADDITIONAL ELIGIBILITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, each State plan approved under this title may provide, at the option of the State, that the State shall offer to each family which received assistance during the entire 6-month period under subsection (b) and which meets the applicable requirement of paragraph (2), in the last month of the period the option of extending coverage under this subsection for the succeeding period not to exceed 12 months.

''(2) INCOME RESTRICTION.—The option under paragraph (1) shall not be made available to a family for a succeeding period unless the State determines that the family's average gross monthly earnings (less such costs for such child care as is necessary for the employment of the caretaker relative) as of the end of the 6-month period under subsection (b) does not exceed 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

''(3) APPLICATION OF EXTENSION RULES.—The provisions of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply to the extension provided under this subsection in the same manner as they apply to the extension provided under subsection (b)(1), except that for purposes of this subsection—

''(A) any reference to a 6-month period under subsection (b)(1) is deemed a reference to the extension period provided under paragraph (1) and any deadlines for any notices or reporting and the premium payment periods shall be modified to correspond to the appropriate calendar quarters of coverage provided under this subsection; and

''(B) any reference to a provision of subsection (a) or (b) is deemed a reference to the corresponding provision of subsection (b) or of this subsection, respectively.''.

(b) STATE OPTION TO WAIVE RECEIPT OF MEDICAID FOR 3 OF PREVIOUS 6 MONTHS TO QUALIFY FOR TMA.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)) is amended by adding at the end the following: ''A State may, at its option, also apply the previous sentence in the case of a family that was receiving such aid for fewer than 3 months, or that had applied for and was eligible for such aid for fewer than 3 months, during the 6 immediately preceding months described in such sentence.''.

(c) ELIMINATION OF SUNSET FOR TMA.—

(1) Subsection (g) of section 1925 of such Act (42 U.S.C. 1396r–6), as redesignated under subsection (a)(2), is repealed.

(2) Section 1902(e)(1) of such Act (42 U.S.C. 1396a(e)(1)) is amended by striking ''(A) Notwithstanding'' and all that follows through ''During such period, for'' in subparagraph (B) and inserting ''For''.

(d) CMS REPORT ON ENROLLMENT AND PARTICIPATION RATES UNDER TMA.—Section 1925 of such Act (42 U.S.C. 1396r–6), as amended by subsections (a)(2)(A) and (c)(1), is amended by inserting after subsection (f) the following:

''(g) ADDITIONAL PROVISIONS.—

''(1) COLLECTION AND REPORTING OF PARTICIPATION INFORMATION.—Each State shall—

''(A) collect and submit to the Secretary, in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults and children under this section; and

''(B) make such information publicly available.

Such information shall be submitted under subparagraph (A) at the same time and frequency in which other enrollment information under this title is submitted to the Secretary. Using such information, the Secretary shall submit to Congress annual reports concerning such rates.''.

(e) COORDINATION OF WORK.—Section 1925(g) of such Act (42 U.S.C. 1396r–6(g)), as added by subsection (d), is amended by adding at the end the following new paragraph:

''(2) COORDINATION WITH ADMINISTRATION FOR CHILDREN AND FAMILIES.—The Administrator of the Centers for Medicare & Medicaid Services, in carrying out this section, shall work with the Assistant Secretary for the Administration for Children and Families to develop guidance or other technical assistance for States regarding best practices in guaranteeing access to transitional medical assistance under this section.''.

(f) ELIMINATION OF TMA REQUIREMENT FOR STATES THAT EXTEND COVERAGE TO CHILDREN AND PARENTS THROUGH 185 PERCENT OF POVERTY.—

(1) IN GENERAL.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended by adding at the end the following:

''(h) PROVISIONS OPTIONAL FOR STATES THAT EXTEND COVERAGE TO CHILDREN AND PARENTS THROUGH 185 PERCENT OF POVERTY.—A State may meet (but is not required to meet) the requirements of subsections (a) and (b) if it provides for medical assistance under section 1931 to families (including both children and caretaker relatives) the average gross monthly earning of which (less such costs for such child care as is necessary for the employment of a caretaker relative) is at or below a level that is at least 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.''.

(2) CONFORMING AMENDMENTS.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended, in subsections (a)(1) and (b)(1), by inserting '', but subject to subsection (h),'' after ''Notwithstanding any other provision of this title,'' each place it appears.

(g) REQUIREMENT OF NOTICE FOR ALL FAMILIES LOSING TANF.—Subsection (a)(2) of section 1925 of such Act (42 U.S.C. 1396r–6) is amended by adding at the end the following flush sentences:

''Each State shall provide, to families whose aid under part A or E of title IV has terminated but whose eligibility for medical assistance under this title continues, written notice of their ongoing eligibility for such medical assistance. If a State makes a determination that any member of a family whose aid under part A or E of title IV is being terminated is also no longer eligible for medical assistance under this title, the notice of such determination shall be supplemented by a 1-page notification form describing the different ways in which individuals and families may qualify for such medical assistance and explaining that individuals and families do not have to be receiving aid under part A or E of title IV in order to qualify for such medical assistance. Such notice shall further be supplemented by information on how to apply for child health assistance under the State children's health insurance program under title XXI and how to apply for medical assistance under this title.''.

(h) EXTENDING USE OF OUTSTATIONED WORKERS TO ACCEPT APPLICATIONS FOR TRANSITIONAL MEDICAL ASSISTANCE.—Section 1902(a)(55) of such Act (42 U.S.C. 1396a(a)(55)) is amended by inserting ''and under section 1931'' after ''(a)(10)(A)(ii)(IX)''.

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to calendar quarters beginning on or after October 1, 2002.

(2) NOTICE.—The amendment made by subsection (g) shall take effect 6 months after the date of enactment of this Act.

(3) DELAY PERMITTED FOR STATE PLAN AMENDMENT.—In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

By Ms. LANDRIEU (for herself, Mr. NELSON of Nebraska, Mr. SHELBY, Mrs. LINCOLN, Mrs. HUTCHISON, Mr. JOHNSON, Mr. BUNNING, and Mr. REID):

S. 884. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. LANDRIEU. Mr. President, 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. 884

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Consumer Rental-Purchase Agreement Act of 2003''.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the rental-purchase industry provides a service that meets and satisfies the demands of many consumers;

(2) each year, approximately 2,300,000 United States households enter into rental-purchase transactions, and over a 5-year period, approximately 4,900,000 United States households will do so;

(3) competition among the various firms engaged in the extension of rental-purchase transactions would be strengthened by informed use of rental-purchase transactions; and

(4) the informed use of rental-purchase transactions results from an awareness of the cost thereof by consumers.

(b) PURPOSES.—The purposes of this Act are to assure the availability of rental-purchase transactions; and to assure simple, meaningful, and consistent disclosure of rental-purchase terms so that consumers will be able to more readily compare the available rental-purchase terms and avoid uninformed use of rental-purchase transactions, and to protect consumers against unfair rental-purchase practices.

SEC. 3. CONSUMER CREDIT PROTECTION ACT.

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new title:

''TITLE X—RENTAL-PURCHASE TRANSACTIONS

''Sec. 1001. Short title; definitions.
''Sec. 1002. Exempted transactions.
''Sec. 1003. General disclosure requirements.
''Sec. 1004. Rental-purchase disclosures.
''Sec. 1005. Other agreement provisions.
''Sec. 1006. Right to acquire ownership.
''Sec. 1007. Prohibited provisions.
''Sec. 1008. Statement of accounts.
''Sec. 1009. Renegotiations and extensions.
''Sec. 1010. Point-of-rental disclosures.
''Sec. 1011. Rental-purchase advertising.
''Sec. 1012. Civil liability.
''Sec. 1013. Additional grounds for civil liability.
''Sec. 1014. Liability of assignees.
''Sec. 1015. Regulations.
''Sec. 1016. Enforcement.
''Sec. 1017. Criminal liability for willful and knowing violation.
''Sec. 1018. Relation to other laws.
''Sec. 1019. Effect on Government agencies.
''Sec. 1020. Compliance date.

''SEC. 1001. SHORT TITLE; DEFINITIONS.

''(a) SHORT TITLE.—This title may be cited as the 'Rental-Purchase Protections Act'.

''(b) DEFINITIONS.—For purposes of this title, the following definitions shall apply:

''(1) ADVERTISEMENT.—The term 'advertisement' means a commercial message in any medium that promotes, directly or indirectly, a rental-purchase agreement, but does not include price tags, window signs, or other in-store merchandising aids.

''(2) AGRICULTURAL PURPOSE.—The term 'agricultural purpose' includes—

''(A) the production, harvest, exhibition, marketing, transformation, processing, or manufacture of agricultural products by a natural person who cultivates plants or propagates or nurtures agricultural products; and

''(B) the acquisition of farmlands, real property with a farm residence, or personal property and services used primarily in farming.

''(3) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(4) CASH PRICE.—The term 'cash price' means the price at which a merchant, in the ordinary course of business, offers to sell for cash the property that is the subject of the rental-purchase transaction.

''(5) CONSUMER.—The term 'consumer' means a natural person who is offered or enters into a rental-purchase agreement.

''(6) DATE OF CONSUMMATION.—The term 'date of consummation' means the date on which a consumer becomes contractually obligated under a rental-purchase agreement.

''(7) INITIAL PAYMENT.—The term 'initial payment' means the amount to be paid before or at the time of consummation of the agreement, or the time of delivery of the property covered by the agreement if delivery occurs after consummation, including—

''(A) the rental payment;

''(B) service, processing, or administrative charges;

''(C) any delivery fee;

''(D) refundable security deposit;

''(E) taxes;

''(F) mandatory fees or charges; and

''(G) any optional fees or charges agreed to by the consumer.

''(8) MERCHANT.—The term 'merchant' means a person who provides the use of property through a rental-purchase agreement in the ordinary course of business and to whom the initial payment by the consumer under the agreement is payable.

''(9) PAYMENT SCHEDULE.—The term 'payment schedule' means the amount and timing of the periodic payments and the total number of all periodic payments that the consumer will make if the consumer acquires ownership of the property by making all periodic payments.

''(10) PERIODIC PAYMENT.—The term 'periodic payment' means the total payment that a consumer will make for a specific rental period after the initial payment, including the rental payment, taxes, mandatory fees or charges, and any optional fees or charges agreed to by the consumer.

''(11) PROPERTY.—The term 'property' means property that is not real property under the laws of the State in which the property is located when it is made available under a rental-purchase agreement.

''(12) RENTAL PAYMENT.—The term 'rental payment' means rent required to be paid by a consumer for the possession and use of property for a specific rental period, but does not include taxes or any fees or charges.

''(13) RENTAL PERIOD.—The term 'rental period' means a week, month, or other specific period of time, during which the consumer has a right to possess and use property that is the subject of a rental-purchase agreement after paying the rental payment and any applicable taxes for such period.

''(14) RENTAL-PURCHASE AGREEMENT.—

''(A) IN GENERAL.—The term 'rental-purchase agreement' means a contract in the form of a bailment or lease for the use of property by a consumer for an initial period of 4 months or less, that is renewable with each payment by the consumer, and that permits but does not obligate the consumer to become the owner of the property.

''(B) EXCLUSIONS.—The term 'rental-purchase agreement' does not include—

''(i) a credit sale (as defined in section 103(g) of the Truth in Lending Act);

''(ii) a consumer lease (as defined in section 181(1) of the Truth in Lending Act); or

''(iii) a transaction giving rise to a debt incurred in connection with the business of lending money or a thing of value.

''(15) RENTAL-PURCHASE COST.—

''(A) IN GENERAL.—For purposes of sections 1010 and 1011, the term 'rental-purchase cost' means the sum of all rental payments and mandatory fees or charges imposed by the merchant as a condition of entering into a rental-purchase agreement or acquiring ownership of property under a rental-purchase agreement, including—

''(i) any service, processing, or administrative charge;

''(ii) any fee for an investigation or credit report; and

''(iii) any charge for delivery required by the merchant.

''(B) EXCLUDED ITEMS.—The following fees or charges shall not be taken into account in determining the rental-purchase cost with respect to a rental-purchase transaction:

''(i) Fees and charges prescribed by law, which actually are or will be paid to public officials or government entities, such as sales tax.

''(ii) Fees and charges for optional products and services offered in connection with a rental-purchase agreement.

''(16) STATE.—The term 'State' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

''(17) TOTAL COST.—The term 'total cost' means the sum of the initial payment and all periodic payments in the payment schedule to be paid by the consumer to acquire ownership of the property that is the subject of the rental-purchase agreement.

''SEC. 1002. EXEMPTED TRANSACTIONS.

''This title does not apply to rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with agencies or instrumentalities of the Federal Government or a State or political subdivision thereof.

''SEC. 1003. GENERAL DISCLOSURE REQUIREMENTS.

''(a) RECIPIENT OF DISCLOSURE.—A merchant shall disclose to any person who will be a signatory to a rental-purchase agreement the information required by sections 1004 and 1005.

''(b) TIMING OF DISCLOSURE.—The disclosures required under sections 1004 and 1005 shall be made before the consummation of the rental-purchase agreement, and clearly and conspicuously in writing as part of the rental-purchase agreement to be signed by the consumer.

''(c) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term 'clearly and conspicuously' means that information required to be disclosed to the consumer shall be worded plainly and simply, and appear in a type size, prominence, and location as to be readily noticeable, readable, and comprehensible to an ordinary consumer.

''SEC. 1004. RENTAL-PURCHASE DISCLOSURES.

''(a) IN GENERAL.—For each rental-purchase agreement, the merchant shall disclose to the consumer, to the extent applicable—

''(1) the date of the consummation of the rental-purchase transaction and the identities of the merchant and the consumer;

''(2) a brief description of the rental property, which shall be sufficient to identify the property to the consumer, including an identification or serial number, if applicable, and a statement indicating whether the property is new or used;

''(3) a description of any fee, charge, or penalty, in addition to the periodic payment, that the consumer may be required to pay under the agreement, which shall be separately identified by type and amount;

''(4) a clear and conspicuous statement that the transaction is a rental-purchase agreement and that the consumer will not obtain ownership of the property until the consumer has paid the total dollar amount necessary to acquire ownership;

''(5) the amount of any initial payment, which includes the first periodic payment, and the total amount of any fees, taxes, or other charges, required to be paid by the consumer;

''(6) the amount of the cash price of the property that is the subject of the rental-purchase agreement, and, if the agreement involves the rental of 2 or more items as a set (as may be defined by the Board in regulation) a statement of the aggregate cash price of all items shall satisfy this requirement;

''(7) the amount and timing of periodic payments, and the total number of periodic payments necessary to acquire ownership of the property under the rental-purchase agreement;

''(8) the total cost, using that term, and a brief description, such as 'This is the amount that you will pay the merchant if you make all periodic payments to acquire ownership of the property.';

''(9) a statement of the right of the consumer to terminate the agreement without paying any fee or charge not previously due under the agreement by voluntarily surrendering or returning the property in good repair upon expiration of any lease term; and

''(10) substantially the following statement: '**OTHER IMPORTANT TERMS**: See your rental-purchase agreement for additional important information on early termination procedures, purchase option rights, responsibilities for loss, damage, or destruction of the property, warranties, maintenance responsibilities, and other charges or penalties you may incur.'.

''(b) FORM OF DISCLOSURE.—The disclosures required by paragraphs (4) through (10) of subsection (a) shall—

''(1) be segregated from other information at the beginning of the rental-purchase agreement;

''(2) contain only directly related information; and

''(3) be identified in boldface, upper-case letters as follows: '**IMPORTANT RENTAL-PURCHASE DISCLOSURES**'.

''(c) DISCLOSURE REQUIREMENTS RELATING TO INSURANCE PREMIUMS AND LIABILITY WAIVERS.—

''(1) IN GENERAL.—A merchant shall clearly and conspicuously disclose in writing to the consumer before the consummation of a rental-purchase agreement that the purchase of leased property insurance or liability waiver coverage is not required as a condition for entering into the rental-purchase agreement.

''(2) AFFIRMATIVE WRITTEN REQUEST AFTER COST DISCLOSURE.—A merchant may provide insurance or liability waiver coverage, directly or indirectly, in connection with a rental-purchase transaction only if—

''(A) the merchant clearly and conspicuously discloses to the consumer the cost of each component of such coverage before the consummation of the rental-purchase agreement; and

''(B) the consumer signs an affirmative written request for such coverage after receiving the disclosures required under paragraph (1) and subparagraph (A) of this paragraph.

''(d) ACCURACY OF DISCLOSURE.—

''(1) IN GENERAL.—The disclosures required to be made under subsection (a) shall be accurate as of the date on which the disclosures are made, based on the information available to the merchant.

''(2) INFORMATION SUBSEQUENTLY RENDERED INACCURATE.—If information required to be disclosed under subsection (a) is subsequently rendered inaccurate as a result of any agreement between the merchant and the consumer subsequent to the delivery of the required disclosures, the resulting inaccuracy shall not constitute a violation of this title.

''SEC. 1005. OTHER AGREEMENT PROVISIONS.

''(a) IN GENERAL.—Each rental-purchase agreement shall—

''(1) provide a statement specifying whether the merchant or the consumer is responsible for loss, theft, damage, or destruction of the property;

''(2) provide a statement specifying whether the merchant or the consumer is responsible for maintaining or servicing the property, together with a brief description of the responsibility;

''(3) provide that the consumer may terminate the agreement without paying any charges not previously due under the agreement by voluntarily surrendering or returning the property that is the subject of the agreement upon expiration of any rental period;

''(4) contain a provision for reinstatement of the agreement, which at a minimum—

''(A) permits a consumer who fails to make a timely rental payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental payments and any other charges then due under the agreement and a payment for the next rental period within 7 business days after failing to make a timely rental payment if the consumer pays monthly, or within 3 business days after failing to make a timely rental payment if the consumer pays more frequently than monthly;

''(B) if the consumer returns or voluntarily surrenders the property covered by the agreement, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits

the consumer to reinstate the agreement during a period of at least 60 days after the date of the return or surrender of the property by the payment of all amounts previously due under the agreement, any applicable fees, and a payment for the next rental period;

''(C) if the consumer has paid 50 percent or more of the total cost necessary to acquire ownership and returns or voluntarily surrenders the property, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 120 days after the date of the return of the property by the payment of all amounts previously due under the agreement, any applicable fees, and a payment for the next rental period; and

''(D) permits the consumer, upon reinstatement of the agreement, to receive the same property, if available, that was the subject of the rental-purchase agreement, or if the same property is not available, a substitute item of comparable quality and condition, except that the Board may, by regulation or order, exempt any independent small business (as defined by regulation of the Board) from the requirement of providing the same or comparable product during the extended reinstatement period provided in subparagraph (C), if the Board determines, taking into account such standards as the Board determines appropriate, that the reinstatement right provided in subparagraph (C) would provide excessive hardship for the independent small business;

''(5) provide a statement specifying the terms under which the consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement either by payment of the total cost to acquire ownership, as provided in section 1006, or by exercise of any early purchase option provided in the rental-purchase agreement;

''(6) provide a statement disclosing that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty; and

''(7) provide, to the extent applicable, a description of any grace period for making any periodic payment, the amount of any security deposit, if any, to be paid by the consumer upon initiation of the rental-purchase agreement, and the terms for refund of such security deposit to the consumer upon return, surrender or purchase of the property.

''(b) REPOSSESSION DURING REINSTATEMENT PERIOD.—Subsection (a)(4) shall not be construed so as to prevent a merchant from attempting to repossess property during the reinstatement period pursuant to subsection (a)(4)(A), but such a repossession does not affect the right of the consumer to reinstatement under subsection (a)(4).

''SEC. 1006. RIGHT TO ACQUIRE OWNERSHIP.

''(a) IN GENERAL.—The consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement, and the rental-purchase agreement shall terminate, upon compliance by the consumer with the requirements of subsection (b) or any early payment option provided in the rental purchase agreement, and upon payment of any past due payments and fees, as permitted by regulation of the Board.

''(b) PAYMENT OF TOTAL COST.—The consumer shall acquire ownership of the rental property upon payment of the total cost of the rental-purchase agreement, as defined in section 1001(17), and as disclosed to the consumer in the rental-purchase agreement pursuant to section 1004(a).

''(c) ADDITIONAL FEES PROHIBITED.—A merchant shall not require the consumer to pay, as a condition for acquiring ownership of the property that is the subject of the rental-purchase agreement, any fee or charge in addition to, or in excess of, the regular periodic payments required by subsection (b), or any early purchase option amount provided in the rental-purchase agreement, as applicable. A requirement that the consumer pay an unpaid late charge or other fee or charge which the merchant has previously billed to the consumer shall not constitute an additional fee or charge for purposes of this subsection.

''(d) TRANSFER OF OWNERSHIP RIGHTS.—Upon payment by the consumer of all payments necessary to acquire ownership under subsection (b) or any early purchase option amount provided in the rental-purchase agreement, as applicable, the merchant shall—

''(1) deliver, or mail to the last known address of the consumer, such documents or other instruments which the Board has determined, by regulation, are necessary to acknowledge full ownership by the consumer of the property acquired pursuant to the rental-purchase agreement; and

''(2) transfer to the consumer the unexpired portion of any warranties provided by the manufacturer, distributor, or seller of the property, which shall apply as if the consumer were the original purchaser of the property, except where such transfer is prohibited by the terms of the warranty.

''SEC. 1007. PROHIBITED PROVISIONS.

''A rental-purchase agreement may not contain—

''(1) a confession of judgment;

''(2) a negotiable instrument;

''(3) a security interest or any other claim of a property interest in any goods, except those goods, the use of which is provided by the merchant pursuant to the agreement;

''(4) a wage assignment;

''(5) a provision requiring the waiver of any legal claim or remedy created by this title or other provision of Federal or State law;

''(6) a provision requiring the consumer, in the event that the property subject to the rental-purchase agreement is lost, stolen, damaged, or destroyed, to pay an amount in excess of the least of—

''(A) the fair market value of the property, as determined by regulation of the Board;

''(B) any early purchase option amount provided in the rental-purchase agreement; or

''(C) the actual cost of repair, as appropriate;

''(7) a provision authorizing the merchant, or a person acting on behalf of the merchant, to enter the dwelling of the consumer or other premises without obtaining the consent of the consumer, or to commit any breach of the peace in connection with the repossession of the rental property or the collection of any obligation or alleged obligation of the consumer arising out of the rental-purchase agreement;

''(8) a provision requiring the purchase of insurance or liability damage waiver to cover the property that is the subject of the rental-purchase agreement, except as permitted by regulation of the Board; or

''(9) a provision requiring the consumer to pay more than 1 late fee or charge for an unpaid or delinquent periodic payment, regardless of the period in which the payment remains unpaid or delinquent, or to pay a late fee or charge for any periodic payment because a previously assessed late fee has not been paid in full.

''SEC. 1008. STATEMENT OF ACCOUNTS.

''Upon request of a consumer, a merchant shall provide a statement of the account of the consumer. If a consumer requests a statement for an individual account more than 4 times in any 12-month period, the merchant may charge a reasonable fee for the additional statements requested in excess of 4 times during that 12-month period.

''SEC. 1009. RENEGOTIATIONS AND EXTENSIONS.

''(a) RENEGOTIATIONS.—For purposes of this section, a 'renegotiation' occurs when a rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A renegotiation requires new disclosures under this title, except as provided in subsection (c).

''(b) EXTENSIONS.—For purposes of this section, an 'extension' is an agreement by the consumer and the merchant to continue an existing rental-purchase agreement beyond the original end of the payment schedule, but does not include a continuation that is the result of a renegotiation.

''(c) EXCEPTIONS.—New disclosures under this title are not required for the following, even if they meet the definition of a renegotiation or an extension under this section:

''(1) A reduction in payments.

''(2) A deferment of 1 or more payments.

''(3) The extension of a rental-purchase agreement.

''(4) The substitution of property with property that has a substantially equivalent or greater economic value, provided that the rental-purchase cost does not increase.

''(5) The deletion of property in a multiple-item agreement.

''(6) A change in the rental period, provided that the rental-purchase cost does not increase.

''(7) An agreement resulting from a court proceeding.

''(8) Any other event described in regulations prescribed by the Board.

''SEC. 1010. POINT-OF-RENTAL DISCLOSURES.

''(a) IN GENERAL.—For any item of property or set of items displayed or offered for rental-purchase, the merchant shall display on or next to the item or set of items a card, tag, or label that clearly and conspicuously discloses—

''(1) a brief description of the property;

''(2) whether the property is new or used;

''(3) the cash price of the property;

''(4) the amount of each rental payment;

''(5) the total number of rental payments necessary to acquire ownership of the property; and

''(6) the rental-purchase cost.

''(b) FORM OF DISCLOSURE.—

''(1) IN GENERAL.—A merchant may make the disclosures required by subsection (a) in the form of a list or catalog which is readily available to the consumer at the point of rental if the merchandise is not displayed in the showroom of the merchant, or if displaying a card, tag, or label would be impractical due to the size of the merchandise.

''(2) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term 'clearly and conspicuously' means that information required to be disclosed to the consumer shall appear in a type size, prominence, and location as to be noticeable, readable, and comprehensible to an ordinary consumer.

''SEC. 1011. RENTAL-PURCHASE ADVERTISING.

''(a) IN GENERAL.—If an advertisement for a rental-purchase transaction refers to or states the amount of any payment for any specific item or set of items, the merchant making the advertisement shall also clearly and conspicuously state in the advertisement for the item or set of items advertised—

''(1) that the transaction advertised is a rental-purchase agreement;

''(2) the amount, timing, and total number of rental payments necessary to acquire ownership under the rental-purchase agreement;

''(3) the amount of the rental-purchase cost;

''(4) that to acquire ownership of the property, the consumer must pay the rental-purchase cost plus applicable taxes; and

''(5) whether the stated payment amount and advertised rental-purchase cost is for new or used property.

''(b) PROHIBITION.—An advertisement for a rental-purchase agreement shall not state or imply that a specific item or set of items is available at specific amounts or terms, unless the merchant usually and customarily offers, or will offer, the item or set of items at the stated amounts or terms.

''(c) CLEARLY AND CONSPICUOUSLY.—

''(1) IN GENERAL.—For purposes of this section, the term 'clearly and conspicuously' means that required disclosures shall be presented in a type, size, shade, contrast, prominence, location, and manner, as applicable to different media for advertising, so as to be readily noticeable and comprehensible to the ordinary consumer.

''(2) REGULATORY GUIDANCE.—The Board shall prescribe regulations on principles and factors to meet the clear and conspicuous standard, as appropriate to print, video, audio, and computerized advertising, reflecting the principles and factors typically applied in each medium by the Federal Trade Commission.

''(3) LIMITATION.—Nothing contrary to, inconsistent with, or in mitigation of, the disclosures required by this section shall be used in any advertisement in any medium, and no audio, video, or print technique shall be used that is likely to obscure or detract significantly from the communication of the required disclosures.

''SEC. 1012. CIVIL LIABILITY.

''(a) IN GENERAL.—Except as otherwise provided in section 1013, any merchant who fails to comply with any requirement of this title with respect to any consumer is liable to such consumer as provided for leases in section 130. For purposes of this section, the term 'creditor' as used in section 130 shall include a 'merchant', as defined in section 1001.

''(b) JURISDICTION OF COURTS; LIMITATION ON ACTIONS.—

''(1) IN GENERAL.—Notwithstanding section 130(e), any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date on which the last payment was made by the consumer under the rental-purchase agreement.

''(2) RECOUPMENT OR SET-OFF.—This subsection shall not bar a consumer from asserting a violation of this title in an action to collect an obligation arising from a rental-purchase agreement, which was brought after the end of the 1-year period described in paragraph (1) as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law.

''SEC. 1013. ADDITIONAL GROUNDS FOR CIVIL LIABILITY.

''(a) INDIVIDUAL CASES WITH ACTUAL DAMAGES.—Any merchant who fails to comply with any requirement imposed under section 1010 or 1011 with respect to any consumer who suffers actual damage from the violation shall be liable to such consumer as provided in section 130.

''(b) PATTERN OR PRACTICE OF VIOLATIONS.—If a merchant engages in a pattern or practice of violating any requirement imposed under section 1010 or 1011, the Federal Trade Commission or an appropriate State attorney general, in accordance with section 1016, may initiate an action to enforce sanctions against the merchant, including—

''(1) an order to cease and desist from such practices; and

''(2) a civil money penalty of such amount as the court may impose, based on such factors as the court may determine to be appropriate.

''SEC. 1014. LIABILITY OF ASSIGNEES.

''(a) ASSIGNEES INCLUDED.—For purposes of section 1013 and this section, the term 'merchant' includes an assignee of a merchant.

''(b) LIABILITIES OF ASSIGNEES.—

''(1) APPARENT VIOLATION.—An action under section 1012 or 1013 for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the rental-purchase agreement to which it relates.

''(2) APPARENT VIOLATION DEFINED.—For purposes of this subsection, a violation that is apparent on the face of a rental-purchase agreement includes, but is not limited to, a disclosure that can be determined to be incomplete or inaccurate from the face of the agreement.

''(3) INVOLUNTARY ASSIGNMENT.—An assignee has no liability under this section in a case in which the assignment is involuntary.

''(4) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting or altering the liability under section 1012 or 1013 of a merchant assigning a rental-purchase agreement.

''(b) PROOF OF DISCLOSURE.—In an action by or against an assignee, the consumer's written acknowledgment of receipt of a disclosure, made as part of the rental-purchase agreement, shall be conclusive proof that the disclosure was made, if the assignee had no knowledge that the disclosure had not been made when the assignee acquired the rental-purchase agreement to which it relates.

''SEC. 1015. REGULATIONS.

''(a) IN GENERAL.—The Board shall prescribe regulations, as necessary to carry out this title, to prevent its circumvention, and to facilitate compliance with its requirements.

''(b) MODEL DISCLOSURE FORMS.—

''(1) BOARD AUTHORITY.—The Board may publish model disclosure forms and clauses for common rental-purchase agreements to facilitate compliance with the disclosure requirements of this title and to aid the consumer in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.

''(2) CONTENT.—In devising forms described in paragraph (1), the Board shall consider the use by merchants of data processing or similar automated equipment.

''(3) USE NOT MANDATORY.—Nothing in this title may be construed to require a merchant to use any model form or clause published by the Board under this section.

''(4) DETERMINATION OF COMPLIANCE.—A merchant shall be deemed to be in compliance with the requirement to provide disclosure under section 1003(a) if the merchant—

''(A) uses any appropriate model form or clause published by the Board under this section; or

''(B) uses any such model form or clause, and changes it by deleting any information which is not required by this title or rearranging the format, if in making such deletion or rearranging the format, the merchant does not affect the substance, clarity, or meaningful sequence of the disclosure.

''(c) EFFECTIVE DATE OF REGULATIONS.—

''(1) IN GENERAL.—Any regulation prescribed by the Board, or any amendment or interpretation thereof, shall not be effective before the October 1 that follows the date of publication of the regulation in final form by at least 6 months.

''(2) AUTHORITY TO MODIFY.—The Board may, at its discretion—

''(A) lengthen the period of time described in paragraph (1) to permit merchants to adjust to accommodate new requirements; or

''(B) shorten that period of time, if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

''(3) VOLUNTARY COMPLIANCE.—Notwithstanding paragraph (1) or (2), a merchant may comply with any newly prescribed disclosure requirement prior to its effective date.

''SEC. 1016. ENFORCEMENT.

''(a) FEDERAL ENFORCEMENT.—Compliance with this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements of this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional test under the Federal Trade Commission Act.

''(b) STATE ENFORCEMENT.—

''(1) IN GENERAL.—An action to enforce the requirements imposed by this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction.

''(2) PRIOR WRITTEN NOTICE.—

''(A) IN GENERAL.—The State attorney general shall provide prior written notice of any civil action described in paragraph (1) to the Federal Trade Commission, and shall provide the Commission with a copy of the complaint.

''(B) EMERGENCY ACTION.—If prior notice required by this paragraph is not feasible, the State attorney general shall provide notice to the Commission immediately upon instituting the action.

''(3) FTC INTERVENTION.—The Commission may—

''(A) intervene in an action described in paragraph (1);

''(B) upon intervening—

''(i) remove the action to the appropriate United States district court, if it was not originally brought there; and

''(ii) be heard on all matters arising in the action; and

''(C) file a petition for appeal.

''SEC. 1017. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION.

''Whoever willfully and knowingly gives false or inaccurate information, or fails to provide information which that person is required to disclose under the provisions of this title or any regulation issued under this title shall be subject to the penalty provisions as provided in section 112.

''SEC. 1018. RELATION TO OTHER LAWS.

''(a) RELATION TO STATE LAW.—

''(1) NO EFFECT ON CONSISTENT STATE LAWS.—Except as otherwise provided in subsection (b), this title does not annul, alter, or affect in any manner the meaning, scope, or applicability of the laws of any State relating to rental-purchase agreements, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

''(2) DETERMINATION OF INCONSISTENCY.—Upon its own motion or upon the request of an interested party, which is submitted in accordance with procedures prescribed by regulation of the Board, the Board shall determine whether any such inconsistency exists. If the Board determines that a term or provision of a State law is inconsistent with

a provision of this title, merchants located in that State shall not be required to comply with that term or provision, and shall incur no liability under the law of that State for failure to follow such term or provision, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

''(3) GREATER PROTECTION UNDER STATE LAW.—Except as provided in subsection (b), for purposes of this section, a term or provision of a State law is not inconsistent with the provisions of this title if the term or provision affords greater protection and benefit to the consumer than the protection and benefit provided under this title, as determined by the Board, on its own motion or upon the petition of any interested party.

''(b) STATE LAWS RELATING TO CHARACTERIZATION OF TRANSACTION.—Notwithstanding subsection (a), this title shall supersede any State law, to the extent that such law—

''(1) regulates a rental-purchase agreement as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, or that imputes to a rental-purchase agreement the creation of a debt or extension of credit; or

''(2) requires the disclosure of a percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate.

''(c) RELATION TO FEDERAL TRADE COMMISSION ACT.—No provision of this title shall be construed as limiting, superseding, or otherwise affecting the applicability of the Federal Trade Commission Act to any merchant or rental-purchase transaction.

''SEC. 1019. EFFECT ON GOVERNMENT AGENCIES.

''No civil liability or criminal penalty under this title may be imposed on the United States or any of its departments or agencies, any State or political subdivision thereof, or any agency of a State or political subdivision thereof.

''SEC. 1020. COMPLIANCE DATE.

''Compliance with this title shall not be required until 6 months after the date of enactment of this title. In any case, a merchant may comply with this title at any time after such date of enactment.''.

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

S. 887. A bill to amend the Internal Revenue Code of 1986 to apply an excise tax to excessive attorneys fees for legal judgments, settlements, or agreements that operate as a tax; to the Committee on Finance.

Mr. KYL. Mr. President, I rise today to introduce the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003, ISCRAA. This legislation will restore to the States billions of dollars in revenue due to them from a massive lawsuit recently conducted on their behalf the tobacco-Related Medicaid expenses litigation. ISCRAA amends an existing provision of the Federal tax code in order to enforce basic, universally accepted fiduciary standards governing the award of attorneys fees. By applying these standards to the attorneys who represented the states in the tobacco settlement, ISCRAA reasonably can be expected to restore to the states income with a present value of approximately $9 billion. I have included at the end of my statement a chart detailing how much each state can expect to recover.

ISCRAA's tax formula is borrowed from the 1996 Tax Act's Intermediate Sanctions Tax, IST, which applies a two-step excise tax to any excessive or unreasonable compensation that the managers of a trust pay to themselves from the assets of the trust. The IST framework encourages the trustee to restore the excessive portion of any fee to the trust—when he does so, the IST's punitive taxes do not apply.

ISCRAA extends the IST to another type of trust relationship: that between a lawyer and his client. ISCRAA applies the IST tax formula to any unreasonable or excessive income that a lawyer collects from litigation resulting in a judgment or settlement in excess of $100 million. To avoid IST taxes, an attorney must restore the excessive portion of the fee to the client.

As my colleague Senator CORNYN will explain today, the ethical and legal abuses that resulted from the 1998 State tobacco settlement make the need for this legislation manifest. Senator CORNYN also will discuss the law of attorneys' fiduciary obligations, which establishes that a fee award is the property of the client—and that any unethical fee must be restored to the client, regardless of how the fee award is structured.

I will discuss today how ISCRAA will affect massive litigations generally. In order to gauge the reasonableness of a lawyer's fee award, ISCRAA adopts and codifies a liberal version of the lodestar-multiplier system. As I will later explain in greater detail, ISCRAA allows fee multipliers of up to 500 percent of reasonable hourly rates. This limit is as generous as the most liberal limits adopted by state courts, and considerably more generous than the limits that federal courts have applied in $100 million cases. ISCRAA's fee formula guarantees that attorneys' fiduciary obligations will be respected, while providing plaintiff's lawyers with ample incentive to provide high-quality legal representation in these types of cases.

Federal supervision of fee awards resulting from $100 million litigations is appropriate for several reasons. First, because of their sheer size, these types of lawsuits inevitably operate as a tax on the consuming public. Few defendants actually can afford to pay such judgments with cash on hand. Instead, the affected industries simply will raise the prices that they charge to their customers.

This is exactly what has happened in the State Medicaid tobacco settlement—according to the leading proponents of that litigation. The first State attorney general to file suit against the tobacco companies has admitted that ''what always happens in these cases is the industry passes the costs to the consumer.'' Other commentators agree that this has occurred in the tobacco litigation. As one law-review article notes, ''the [tobacco] settlement * * * is a tax because it's a set of payments made by tobacco companies that depend on how many packs they sell; in short, it looks like a tax and quacks like a tax.''

Because of the way that these massive judgments typically are satisfied, it is particularly important to ensure that attorneys are paid in proportion to the services that they provided—rather than solely on the basis of the size of the recovery. Again, the State tobacco settlement highlights the nature of the problem. As two of the leading academic commentators have noted, it is ''very troubl[ing]'' that under that agreement, ''a group of private citizens [are] getting paid a percentage of a tax increase they helped pass.'' The sheer size of the tobacco settlement—and the fact that attorneys fees were based on this size, rather than on the attorneys' actual efforts—has given the fee awards an uncanny resemblance to the medieval practice of tax farming. In all but name, the government has licensed a group of private individuals to collect a tax from the consuming public.

I would emphasize at this point that ISCRAA is not an attack on the State tobacco lawsuits. The bill does not pass judgment on the merits or the appropriateness of this type of litigation. ISCRAA simply is designed to ensure that when such lawsuits are brought on the public's behalf, the public receive its fair share of the proceeds. If a State chooses to seek compensatory revenue from industry for past harms, then the resulting tax on the public—minus the reasonable value of the legal services actually provided—must go to the State treasury.

There are several reasons why $100 million is an appropriate threshold for applying ISCRAA's fee formula. First, the courts themselves have indicated that fee agreements based primarily on the size of the recovery tend to become unreasonable when judgements reach this size. As one court has stated, ''in much smaller cases, a fee award of 33 percent does not present the danger of providing the plaintiff's counsel with the windfall that would accompany a 'megafund' settlement of $100 million or upwards. But it is quite different when the figures hit the really big time.'' Or as the Third Circuit notes, ''courts have generally decreased the percentage awarded [for attorneys fees] as the amount recovered increases, and $100 million seems to be the informal marker of a 'very large' settlement.''

The logic of avoiding judgment-based awards in these very large cases is straightforward. As one court explains, ''it is not 150 times more difficult to prepare, try, and settle a $150 million case than it is to try a $1 million case, but the application of a percentage comparable to that in a smaller case may yield an award 150 times greater.'' Thus, according to another court, ''there is considerable merit'' to disallowing standard percentage awards as the ''size of the [recovery] fund increases. In many instances the increase [in the recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel.''

It also bears mention that because of its $100 million threshold, ISCRAA applies to a fairly limited universe of cases. As courts have remarked, ''there are few so-called 'megafund' cases with settlements over $100 million.'' In 2001, the U.S. Court of Appeals for the Third Circuit attempted to catalogue all common-fund cases in federal court that resulted in recoveries greater than $100 million. Though such litigations have been more frequent in recent years, the Third Circuit identified only 22 such cases since 1985. See in re Cendant Corp. PRIDES Litig., 243 F.3d 722, 737 (3d Cir. 2001).

ISCRAA is somewhat broader than the criteria that Cendant Corp. employed to collect cases. ISCRAA is not limited to common-fund cases—it also applies to judgments won on behalf of tax-exempt entities or even single individuals. ISCRAA also applies to cases brought in State court, and it aggregates identical claims that are brought against common defendants in separate actions, in order to prevent evasion of its limits through the subdivision of actions. Nevertheless, ISCRAA's scope remains fairly narrow. An academic specialist who is familiar with developments in this field has reviewed the bill and concluded that because of its ''relatively high threshold,'' ISCRAA probably would apply only to about 15–20 litigations per year. I will include a copy of this professor's letter to me in the CONGRESSIONAL RECORD.

Finally, a $100 million threshold also is appropriate because it limits ISCRAA's reach to litigations that are a natural subject of congress's authority to regulate interstate commerce. It is well-established that ''Congress' commerce authority includes the power to regulate . . . those [economic] activities that substantially affect interstate commerce.'' United States v. Morrison, 529 U.S. 598, 609 (2000). See also *United States* v. *Lopez*, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified $100 million as guideline for determining whether a matter has a significant impact on interState commerce. See, e.g. Executive Order 12866; Congressional Review Act, 5 U.S.C. § 804(2); Unfunded Mandates Act, 2 U.S.C. § 1532(a). Because it is limited to litigations of this size, ISCRAA is consistent with congress's power and obligation to protect the flow of commerce between states.

Another point that I would like to emphasize today is that ISCRAA is not an anti-plaintiffs' lawyer bill. It is not stingy toward trial attorneys. ISCRAA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRAA's fee formula is as generous as the limits set by the most liberal State courts that engage in meaningful review of attorneys fees, and is considerably more generous than the Federal courts' practices in $100 million cases. Moreover, the multiplier criteria that ISCRAA employs universally are recognized as legitimate prerequisites for a contingency fee—even by trial lawyers' professional associations.

Federal courts primarily rely on two systems for calculating attorneys fees in cases, such as class actions, in which they are required to set ''reasonable fees:'' the percentage method and the lodestar-multiplier method. The percentage method, as its name implies, calculates fees as a percentage of the total recovery. The lodestar system, by contrast, requires a court to first calculate a fee based on the number of hours that the lawyer worked multiplied by prevailing hourly rates, the ''lodestar''. The court then multiplies this lodestar fee again in order to reward the attorney for the risk of nonpayment of fees that he assumed and for any exceptional services that he provided.

Over the last thirty years, courts have moved back and forth between these two systems. Only a few courts make lodestar-multipliers the exclusive means of awarding attorneys fees. But as one academic commentator has noted, ''lodestar, or hours-based methods, have been adopted in every [federal judicial] circuit.''

And more importantly, in large-recovery cases, there has been very little difference between lodestar and percentage systems. This is because even when courts apply a percentage to calculate fees, and as judgements become very large, courts typically also calculate a reasonable lodestar in order to determine what constitutes a reasonable percentage. Thus, again, as the Third Circuit notes, ''courts have generally decreased the percentage awarded as the amount recovered increases, and $100 million seems to be the informal marker of a 'very large' settlement.''

Courts have been wary of awarding fees based on percentages alone. As one State supreme court explains: ''to begin the assessment by arbitrarily picking a percentage amount without any reliance on a cognizable structure invites decisions that are nonobjective and inconsistent. What constitutes a reasonable percentage may differ from one judge to another depending on each judge's predilections, background, and geographical location in the state.''

Thus ''courts that employ the percentage approach appear to be motivated in part by a lodestar dynamic. Because courts are reluctant to give fee awards totally incommensurate with the efforts of the attorneys, percentage awards generally decrease as the amount of the recovery increases.''

One result of the cross-use of the lodestar and percentage systems is that even when courts use the percentage system, those awards overwhelmingly tend to reflect a reasonable lodestar multiplier. Therefore, even percentage-based cases tend to provide evidence of the range of multipliers that the courts consider to be reasonable.

In 2001, the Third Circuit ''set forth a chart of fee awards given in Federal courts since 1985 in class actions in which the settlement fund exceeded $100 million and in which the percentage of recovery method was used.'' Cendant Corp. The court identified 17 such cases. In almost every case, the Third Circuit could calculate the multiplier that was used, and ''the lodestar multiplier in those cases never exceeded 2.99.'' And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.

Other courts, surveying smaller cases than the $100 million recoveries examined in Cendant Corp., have identified larger multipliers. One Federal district court has ''observe[d] that in virtually every case where the court notes a lodestar but awards fees based upon a percentage, the lodestar multiplier converted from this percentage is in the range of 1 to 4.'' Another Federal district court has found that ''the range of lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5.''

By contrast, some courts have declared that they would allow only lower multipliers. One Federal court has stated that ''only in the most exceptional circumstances would this court award a multiplier of 3 or greater. . . . this court believes that lodestars enhanced by multipliers less than 3 should adequately compensate even the most talented counsel.'' And the Seventh Circuit has suggested that ''it may be that a doubling of the lodestar would provide a sensible ceiling.''

On the other hand, the Florida Supreme Court—which is generally regarded as one of the more plaintiff-friendly courts in the United States—has announced that: ''we set the maximum multiplier available in this common-fund category of cases at 5. . . . [A] multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee that remains within the bounds of reasonableness. We emphasize that 5 is a maximum multiplier.''

ISCRAA adopts this more liberal standard. It allows fees as high as 500 percent of reasonable hourly rates. ISCRAA awards multipliers based on two criteria: it allows up to 300 percent to be added onto the amount of reasonable hourly fees if a case that involved a substantial risk of nonrecovery of fees, and allows an additional 100 percent add-on if the attorney provided exceptional services that improved the plaintiff's recovery.

The criteria that ISCRAA employs universally are recognized as necessary prerequisites to the legitimacy of a contingency fee. ''Courts in general have insisted that a contingent fee be

truly contingent. The typically elevated fee reflecting the risk to the lawyer of receiving no fee will be permitted only if the representation indeed involves a significant degree of risk.'' Charles W. Wolfram, Modern Legal Ethics § 9.4, at 532 (1986). The risk requirement has been recognized ever since contingency fees first were allowed in the United States. The American Bar Association even noted at that time that ''a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation.'' ABA Canons of Professional Ethics, Canon 13 (1908). Indeed, even the professional associations of plaintiffs' attorneys have, at times, acknowledged that contingent fees should be based on an actual contingency. In a guide to its members, the Association of Trial Lawyers of America has ''recommend[ed]'' that attorneys ''exercise sound judgment in using a percentage in the contingent fee contract that is commensurate with the risk, cost and effort required.'' ATLA, Keys to the Courthouse: Quick Facts on the Contingency Fee System 13 (1994).

The criteria that ISCRAA employs are universally accepted—and the limits that it sets should be universally acceptable. ISCRAA is not intended to alter the considered standards of any jurisdiction. Rather, it is intended to enforce those standards—and to correct the occasional extreme outlier. Because ISCRAA incorporates a fee formula that is substantially more liberal than the usual practices of the federal courts in $100 million cases, we can be confident that high-quality legal representation will remain available to plaintiffs in these large litigations. See, e.g. in re Sumitomo Copper Litig., 74 F. Supp. 2d 393, S.D.N.Y. 1999, RICO and Commodities Exchange Act case resulting in $116 million recovery; attorneys reviewed millions of pages of documents located throughout the world, many requiring translation from Japanese; Federal district court awards multiplier of 250 percent for total fee of $32 million.

Another issue that I will address today is the argument—occasionally raised in opposition to proposals to limit attorneys fees—that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that ''a fiduciary relationship exists as a matter of law between attorney and client.'' (Illinois Supreme Court.) As one academic commentator has noted: ''[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. . . . Lawyers are fiduciaries because retention of an attorney to exercise 'professional judgment' on the client's behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client's interests as the client would define them if the client were well-informed.''

The lawyer's status as fiduciary places limits on his dealings with his client—including with regard to his fee. ''An attorney's freedom to contract with a client is subject to the constraints of ethical considerations.'' New Jersey Supreme Court. ''In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.'' Massachusetts Appeals Court. ''As a result of lawyers' special role in the legal system, contracts between lawyer and client receive special scrutiny. . . . While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.'' Joseph M. Perillo, law professor.

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court: ''We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, a fee agreement between lawyer and client is not an ordinary business contract. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is a branch of the administration of justice and not a mere money getting trade.' ABA Canons of Professional Ethics, Canon 12.''

The same principle has been identified by the Florida Supreme Court: There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.''

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. ''[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an 'unreasonable' fee cannot be recovered, even if agreed to by the client.'' G. Hazard, Jr. & W. Hodes, The Law of Lawyering 1. 5:205 Fee Litigation and Arbitration 120 (1998 Supp.).

As one court has stated, ''[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true no matter what fee is specified in the contract, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, reasonableness is an implied term in every contract for attorney's fees.''

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. ''Fees must be reasonably proportional to the services rendered and the situation presented.'' (Arizona Supreme Court.) ''If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' . . . even though the client consented to such fee.'' West Virginia Supreme Court.

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust—and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

Another subject that I would like to address today is ISCRAA's effective date. ISCRAA applies to attorney fee payments received after June 1, 2002. This effective date is appropriate under the circumstances of the State tobacco settlement for several reasons: first, Congress routinely enacts major tax legislation with effective dates that look back much further than does ISCRAA. The Supreme Court has ''repeatedly upheld [such moderately] retroactive tax legislation against a due process challenge.'' United States v. Carlton, 512 U.S. 26, 30–31, 1994; see id. at 33, upholding tax whose ''actual retroactive effect . . . extended for a period only slightly greater than one year''.

Second, ISCRAA is not even truly retroactive. ISCRAA does not change the substantive law governing attorneys fee awards. Rather, it simply enforces established, pre-existing fiduciary standards that already bind every attorney in every state. The Model Rules of Professional Conduct, at Rule 1.5(a), contain a clear, direct command that ''a lawyer's fee shall be reasonable.'' Similarly, the Model Code of Professional Responsibility, at DR 2–106, directs that an attorney ''shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.'' The Model Code further explains that an attorneys fee is ''clearly excessive when, after a review of the facts, a

lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.'' Finally, as academic commentators point out, in addition to the model rules, ''all State rules of professional conduct prohibit attorneys from charging excessive fees.''

As I described earlier, to enforce fiduciary standards, ISCRAA codifies and applies a very generous version of the fee multiplier system, allowing attorneys fees as high as 500 percent of reasonable hourly rates. This is considerably more generous than what Federal courts typically allow in large-judgment cases. No attorney can be heard to complain that he is subjected to a law that is more generous than his existing fiduciary obligations.

Further, none of the tobacco-settlement attorneys can reasonably maintain that they have a vested right to see their fiduciary duties to the states go unenforced. Nevertheless, in order to be fair to all parties, ISCRAA's excise taxes are applied only to fees that were paid after June 1, 2002. By this date, all of the tobacco lawyers twice had received notice from George W. Bush that he intended to enact legislation to enforce their fiduciary obligations. In February 2000, then-candidate Bush promised that he would ''extend[] the 'excess benefits' provision of the tax code to private lawyers who contract with states and municipalities,'' with ''the reasonableness of the fees * * * [to] be determined by the standard judicial 'lodestar' method.'' And as early as February 2001, the current Administration announced that it anticipated providing ''additional public health resources for the States from the President's proposal to extend fiduciary responsibilities to the representatives of States in tobacco lawsuits.'' See A Blueprint for New Beginnings: A Responsible Budget for America's Priorities 80, Office of Management and Budget, February 28, 2001.

Under ISCRAA, all of the attorneys who participated in the State tobacco settlement still will be very liberally compensated. Because ISCRAA does not apply to the first three-and-a-half years of fee payments under the settlement, it exempts the first two-and-a-half billion dollars that these lawyers received. Every one of the tobacco lawyers will have more than enough money left to pay for the yachts, luxury cars, and vacation homes that were purchased with the tobacco proceeds. ISCRAA might simply be described as the one-yacht-per-lawyer rule.

But most importantly, because ISCRAA applies to the last year's worth of tobacco fee payments, and to all future payments, it will return a substantial amount of funds to the States—money that already should belong to the States under any reasonable interpretation of fiduciary standards. It is critical that these funds be restored in this time of widespread fiscal crisis. Today a large number of the States face massive budget deficits that threaten their ability to provide health care to the indigent, to fully fund public education, and to guarantee adequate and effective law enforcement. When such needs risk going unmet, fee abuses that cost the States billions of dollars simply can no longer be ignored. The States must receive their fair share of the tobacco settlement proceeds—funds that are badly needed to support basic public services.

Under the terms of the November 1998 Master Settlement Agreement, MSA, between the States and tobacco companies, $500 million in cigarette taxes is set aside every year to pay the attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators—estimated to total $15 billion—the $500-million-a-year income stream, which is not adjusted for inflation, may have to be paid in perpetuity. In addition to this annuity, the MSA also sets aside an additional $1.25 billion in cigarette taxes to compensate those lawyers who choose to forego arbitration and negotiate their fees directly with the tobacco companies.

The present value of the $500-million-a-year fee stream—discounting all future payments for the time value of money—has been conservatively estimated at just over $8 billion. Current and future payments from the $1.25 billion fee fund are less certain, since the grants made from that fund and their disbursement schedule have been kept obscure from the public. Because ISCRAA's effective date is June 1, 2002, ISCRAA will probably recoup for the States an additional $1 billion above the present value of future $500 million-a-year payments. ISCRAA does not affect the first three-and-a-half years of fees paid under the MSA. Because these payments almost certainly are adequate to pay all reasonable fees incurred in the litigation, ISCRAA would restore to the States virtually all fees paid after its effective date. Thus the net present value of the sums that ISCRAA would provide to the States can conservatively be estimated at $9 billion.

By restoring these excess fee payments to the states' MSA escrow account and returning them to the States on a per capita basis, ISCRAA guarantees every State a very substantial recovery. Based on the estimates that I have described, even our Nation's smallest State, Wyoming, would recoup at least $15 million in tobacco fee payments, and other small States, such as North Dakota, would receive approximately $20 million. On the other hand, our nation's largest State, California, can expect to recoup at least $1 billion. Other large States would also see generous returns: Florida, $511 million; Illinois, $397 million; Michigan, $318 million; New York, $607 million; Ohio, $363 million; and Texas, $667 million.

Here is how much each State can expect to recover:

Alabama	$142,220,272
Alaska	20,046,569
Arizona	164,079,935
Arkansas	85,496,543
California	1,083,230,642
Colorado	137,556,275
Connecticut	108,911,511
Delaware	25,059,883
District of Columbia	18,294,706
Florida	511,123,686
Georgia	261,806,474
Hawaii	38,745,502
Idaho	41,381,203
Illinois	397,174,614
Indiana	194,456,664
Iowa	93,585,167
Kansas	85,976,825
Kentucky	129,257,603
Louisiana	142,919,876
Maine	40,772,615
Maryland	169,384,021
Massachusetts	203,046,997
Michigan	317,835,940
Minnesota	157,327,166
Mississippi	90,973,451
Missouri	178,937,382
Montana	28,852,605
Nebraska	54,726,966
Nevada	63,905,164
New Hampshire	39,520,996
New Jersey	269,094,724
New Mexico	58,173,915
New York	606,875,689
North Carolina	257,420,675
North Dakota	20,537,847
Ohio	363,078,559
Oklahoma	110,353,478
Oregon	109,417,889
Pennsylvania	392,753,669
Rhode Island	33,525,716
South Carolina	128,305,961
South Dakota	24,140,253
Tennessee	181,945,847
Texas	666,850,647
Utah	71,417,756
Vermont	19,470,563
Virginia	226,374,115
Washington	188,496,659
West Virginia	57,831,660
Wisconsin	171,532,756
Wyoming	15,791,372

I ask unanimous consent that the text of the bill and the following four articles be printed in the RECORD.

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

S. 887

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003'' (ISCRAA).

SEC. 2. EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL.—Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

''SEC. 4959. TAXES ON EXCESS FEE TRANSACTIONS.

''(a) INITIAL TAXES.—There is hereby imposed on the collecting attorney in each excess fee transaction a tax equal to 5 percent of the excess fee. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(b) ADDITIONAL TAX ON THE COLLECTING ATTORNEY.—In any case in which a tax is imposed by subsection (a) on an excess fee transaction and the excess fee involved in such transaction is not corrected within the

taxable period, there is hereby imposed a tax equal to 200 percent of the excess fee involved. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(c) EXCESS FEE TRANSACTION; EXCESS FEE.—For purposes of this section—

''(1) EXCESS FEE TRANSACTION.—

''(A) IN GENERAL.—The term 'excess fee transaction' means any transaction in which a fee is provided by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff if the amount of the fee provided exceeds the value of the services received in exchange therefor or subsection (g)(1) applies.

''(B) DETERMINATION OF VALUE.—For purposes of subparagraph (A), in determining whether the amount of the fee provided exceeds the value of the services received in exchange therefor, the value of the services shall be the sum of—

''(i) the reasonable expenses incurred by the collecting attorney in the course of the representation of the applicable plaintiff, and

''(ii) a reasonable fee based on—

''(I) the number of hours of non-duplicative, professional quality legal work provided by the collecting attorney of material value to the outcome of the representation of the applicable plaintiff, taking into account the factors described in subparagraphs (B) and (D) of subsection (h)(2),

''(II) reasonable hourly rates for the individuals performing such work based on hourly rates charged by other attorneys for the rendition of comparable services, including rates charged by adversary defense counsel in the representation, taking into account the factors described in subparagraphs (A), (C), (E), and (G) of subsection (h)(2), and

''(III) to the extent such items are not taken into account in establishing the reasonable hourly rates under subclause (II), an appropriate adjustment rate determined in accordance with subparagraph (C) to compensate the collecting attorney for periods of substantial risk of non-payment of fees and for skillful or innovative services which increase the amount of the applicable plaintiff's recovery.

''(C) ADJUSTMENT RATE.—

''(i) IN GENERAL.—For purposes of this paragraph, an appropriate adjustment rate is a percentage of the reasonable hourly rate under subparagraph (B)(ii)(II) which is added to the amount of such rate and which is not more than the sum of one risk percentage and one skill percentage described in clauses (ii) and (iii), respectively.

''(ii) RISK PERCENTAGE.—For purposes of this subparagraph, the term 'risk percentage' means a percentage rate that is proportional to the collecting attorney's risk of nonrecovery of fees and which is—

''(I) in the case of a collecting attorney who assumed a substantial risk of non-payment of fees, not more than 100 percent,

''(II) in the case of a collecting attorney who assumed a substantial risk of non-payment of fees and devoted more than 8,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 2 years to the case before resolution of all claims, not more than 200 percent, or

''(III) in the case of a collecting attorney who assumed a substantial risk of non-payment of fees and devoted more than 15,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 4 years to the case before resolution of all claims, not more than 300 percent.

''(iii) SKILL PERCENTAGE.—For purposes of this subparagraph, the term 'skill percentage' means, in the case of a collecting attorney who has demonstrated exceptionally skillful or innovative legal service which generated a recovery for the applicable plaintiff substantially greater than the typical recovery in similar cases, a percentage rate that is proportional to the increase in the applicable plaintiff's recovery and that is not more than 100 percent.

''(iv) LIMITATION.—An appropriate adjustment rate shall not increase the collecting attorney's fee above an amount that is proportional to the applicable plaintiff's recovery.

''(D) COURT APPROVAL OF FEES.—Fee payments approved by any court shall be presumed to not be in excess of the value of the services received in exchange therefor if the court approving the fee—

''(i) did not approve an adjustment rate greater than that determined to be appropriate under subparagraph (C) in a case where such fee included an adjustment rate, and

''(ii) obtained and relied upon a report of a legal auditing firm with respect to such fee in accordance with the procedures in subsection (h).

''(2) EXCESS FEE.—The term 'excess fee' means the excess referred to in paragraph (1)(A).

''(d) JOINT AND SEVERAL LIABILITY.—For purposes of this section, if more than 1 person is liable for any tax imposed by subsection (a), all such persons shall be jointly and severally liable for such tax.

''(e) APPLICABLE PLAINTIFF.—For purposes of this section, the term 'applicable plaintiff' means any person represented by a collecting attorney with respect to a claim described in subsection (f)(1).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) COLLECTING ATTORNEY.—The term 'collecting attorney' means any person engaged in the practice of law who represents—

''(A) any governmental entity, including any State, municipality, or political subdivision of a State, or any person acting on such entity's behalf, including pursuant to Federal or State Qui Tam statutes, in a claim for recoupment of payments made or to be made by such entity to or on behalf of any natural person by reason, directly or indirectly, of a breach of duty that causes damage to such natural person,

''(B) any organization described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), in a claim for damages based on a breach of duty, whether civil or criminal, causing damage to such organization,

''(C) any natural person seeking to recover damages in a claim based on breaches of duty, whether civil or criminal, causing damage to such natural person, or

''(D) any assignee or other holder of claims described in subparagraph (A), (B), or (C),

when 1 or more of such claims, whether or not joined in 1 action, involve the same or a coordinated group of plaintiff's attorneys or similarly situated defendants, arise out of the same transaction or set of facts or involve substantially similar liability issues, and result in settlements or judgments aggregating at least $100,000,000.

''(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess fee transaction, the period beginning with the date on which the transaction occurs and ending 90 days after the earliest of—

''(A) the date of the mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), or

''(B) the date on which the tax imposed by subsection (a) is assessed.

''(3) CORRECTION.—

''(A) GENERAL RULE.—Any excess fee transaction is corrected by undoing the excess fee to the extent possible and taking any additional measures necessary to place the applicable plaintiff in a financial position not worse than that in which such plaintiff would be if the collecting attorney were dealing under the highest fiduciary standards.

''(B) PAYMENT OF EXCESS FEES.—

''(i) IN GENERAL.—Except as provided in clause (ii), a collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the applicable plaintiff.

''(ii) CERTAIN SETTLEMENTS.—In the case of excess fees arising from or related to that certain Master Settlement Agreement of November 23, 1998, and other, concluded Settlement Agreements based on State health care expenditures pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including lawsuits involving the States of Florida, Minnesota, Mississippi, and Texas, the collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the 50 States in proportion to each State's share of the United States population.

''(C) NO WAIVER OF FEE.—No collecting attorney may avoid imposition of any tax imposed by this section by transferring any portion of the excess fee or refusing to accept any portion of the excess fee.

''(g) DISCLOSURE REQUIREMENTS.—

''(1) TREATMENT AS EXCESS FEE.—Any fee provided after the date of the enactment of this subsection by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff shall be deemed to be an excess fee provided in an excess fee transaction unless the disclosure requirements described in paragraph (2) are met.

''(2) CONTENTS OF STATEMENT.—The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney receives any fees with respect to a claim described in subsection (f)(1), if such collecting attorney—

''(A) includes in the return of tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

''(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff prior to the deadline (including extensions) for filing such return.

''(h) LEGAL AUDITING FIRM.—

''(1) IN GENERAL.—In any case before a Federal district court or a State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing attorney billings and select 1 such legal auditing firm to review the billing records submitted by the collecting attorney, under the same standards the firm would use if it were hired by a private party to review legal bills submitted to the party, for the reasonableness of such attorney's billing patterns and practices. The court shall require the collecting attorney to submit billing records, cost records, and any other information sought by such firm in its review.

''(2) REVIEW BY LEGAL AUDITING FIRM.—In reviewing the billing records and work performed by the collecting attorney, the legal auditing firm shall address all relevant matters, including—

''(A) the hourly rates of the collecting attorney compared with the prevailing market rates for the services rendered by the collecting attorney,

''(B) the number of hours worked by the collecting attorney on the case compared with other cases that the collecting attorney worked on during the same period,

''(C) whether the collecting attorney performed tasks that could have been performed by attorneys with lower billing rates,

''(D) whether the collecting attorney used appropriate billing methodology, including keeping contemporaneous time records and using appropriate billing time increments,

''(E) whether particular tasks were staffed appropriately,

''(F) whether the costs and expenses submitted by the collecting attorney were reasonable,

''(G) whether the collecting attorney exercised billing judgment, and

''(H) any other matters normally addressed by the legal auditing firm when reviewing attorney billings for private clients.

''(3) FILING OF REPORT; RESPONSE; BURDEN OF PROOF.—The court shall set a date for the filing of the report of the legal auditing firm, and allow the collecting attorney or any applicable plaintiff to respond to the report within a reasonable time period. The report shall be presumed correct unless rebutted by the collecting attorney or any applicable plaintiff by clear and convincing evidence.

''(4) FEE FOR LEGAL AUDITING FIRM.—The fee for the report of the legal auditing firm shall be paid from the collecting attorney's fee award, the applicable plaintiff's recovery, or both in a manner determined by the court.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations to prevent avoidance of the purposes of this section and regulations requiring recordkeeping and information reporting.''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Subsections (a), (b), and (c) of section 4963 of the Internal Revenue Code of 1986 are each amended by inserting ''4959,'' after ''4958,''.

(2) Subsection (e) of section 6213 of such Code is amended by inserting ''4959 (relating to excess fee transactions),'' before ''4971''.

(3) Paragraphs (2) and (3) of section 7422(g) of such Code are each amended by inserting ''4959,'' after ''4958,''.

(4) The heading for subchapter D of chapter 42 of such Code is amended to read as follows:

''Subchapter D—Failure by Certain Charitable Organizations and Persons to Meet Certain Qualification Requirements and Fiduciary Standards.''.

(5) The table of subchapters for chapter 42 of such Code is amended by striking the item relating to subchapter D and inserting the following:

''SUBCHAPTER D. Failure by certain charitable organizations and persons to meet certain qualification requirements and fiduciary standards.''.

(6) The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

''Sec. 4959. Taxes on excess fee transactions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to excess fees paid on or after June 1, 2002.

SEC. 3. DECLARATORY JUDGMENTS RELATING TO EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL.—Subchapter B of chapter 76 of the Internal Revenue Code of 1986 (relating to judicial proceedings) is amended by redesignating section 7437 as section 7438 and by inserting after section 7436 the following new section:

''SEC. 7437. DECLARATORY JUDGMENTS RELATING TO TAX ON EXCESS FEE TRANSACTIONS.

''(a) IN GENERAL.—In a case of actual controversy involving—

''(1) a determination by the Secretary or the collecting attorney with respect to the imposition of the excise tax on excess fee transactions on such collecting attorney under section 4959, or

''(2) a failure by the Secretary or the collecting attorney to make such a determination,

upon the filing of an appropriate pleading by an applicable plaintiff, the Tax Court may make a declaration with respect to such determination or failure. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

''(b) DEFERENTIAL REVIEW.—If a collecting attorney's fee has been approved by a court in accordance with section 4959(c)(1)(D) or by the Secretary pursuant to section 4959, the Tax Court shall review the fee only for an abuse of discretion.

''(c) LEGAL AUDITING FIRM.—In any petition for a declaration referred to in subsection (a):

''(1) NO PREVIOUS REPORT.—If a report by a legal auditing firm that meets the requirements of section 4959(h) has not been previously produced and relied on by another court, the Tax Court shall hire such a legal auditing firm and rely on its report pursuant to the procedures in section 4959(h).

''(2) SECOND REPORT.—

''(A) IN GENERAL.—If a report by a legal auditing firm has been approved by a court in accordance with section 4959, the Tax Court shall hire a second legal auditing firm upon the request of the petitioner.

''(B) FEE FOR REPORT.—The Tax Court may direct the petitioner to pay the fee for any report of a legal auditing firm provided pursuant to subparagraph (A).

''(d) TIME FOR BRINGING ACTION.—No proceeding may be initiated under this section by any person until 90 days after such person first notifies the Secretary of the excess fee transaction with respect to which the proceeding relates.

''(e) DEFINITIONS.—For purposes of this section, any term used in this section and also in section 4959 shall have the meaning given such term by section 4959.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 7437 and by inserting the following new items:

''Sec. 7437. Declaratory judgments relating to tax on excess fee transactions.

''Sec. 7438. Cross references.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

[From the Connecticut Law Review, Summer, 2001]

A MOST DANGEROUS INDISCRETION: THE LEGAL, ECONOMIC, AND POLITICAL LEGACY OF THE GOVERNMENTS' TOBACCO LITIGATION

(By Margaret A. Little)

In 1997 and 1998, the tobacco companies settled with four states who were approaching trial under agreements valued at around $40 billion. This was followed in late 1998 by a Master Settlement Agreement (''MSA'') wherein forty-six states entered into a massive $206 billion settlement agreement with the tobacco companies. In addition, the tobacco companies agreed to contribute $1.5 billion to an anti-smoking ''education and advertising campaign'' and $250 million ''for a foundation dedicated to reducing teen smoking.'' These agreements which total $246 billion are reported to represent the largest privately negotiated redistribution of wealth in world history. MSA further obligates the tobacco companies to pay the private practice attorneys hired by the settling states what has been variously estimated at $8 to $10 billion in net present value. Each state's legislature must pass a ''Qualifying Statute'' to be eligible for the ''damage'' payments. The agreement could not be fully implemented until courts in eighty percent of the states ''in number and aggregate damages'' has approved the settlement. The most significant difference between the settlement with the states and the 1997 federal settlement is that the MSA confers no protections on the tobacco companies from suits by smokers.

[From the Economist, February 13, 1999]

KNIGHTS IN GOLDEN ARMOUR

For Americans, lawyers seem to embody extremes of both heroism and greed, sometimes at the same time. A film currently playing to packed cinemas across the country, ''A Civil Action'', tells the true story of one crusading lawyer (played by John Travolta) who bankrupted himself trying to sue two big companies which had polluted a small town's drinking water. But when they win, even lawyer-heroes expect to be well paid. The small group of contingency-fee lawyers who helped state governments bring the tobacco industry to heel are about to collect fees so colossal that they dwarf even the excesses of Wall Street investment bankers in the mad, bad 1980s.

Tobacco remains a bonanza for lawyers in all kinds of ways. On February 10th, a Californian jury awarded $51.5m in damages against Philip Morris to a woman with inoperable lung cancer. The award, by far the largest in a smoking-related lawsuit, was a brusque reminder that, despite last year's settlement with the states, tobacco companies remain vulnerable to suits brought by individuals; and that as long as smokers want compensation, lawyers will reap fortunes.

The legal profession is still trying to digest the implications of the staggering $8.1 billion a three-man arbitration panel awarded in December to lawyers for the work they did in helping Florida, Mississippi and Texas win a settlement from the tobacco industry for health-care costs. Over the next six months, the panel is expected to use the same criteria to set fees for the lawyers who represented dozens of other states in the negotiations which led to a national settlement last November. If they do, 250–450 lucky lawyers could collect between $20 billion and $25 billion in fees.

''These amounts are grotesque and absurd,'' says Lester Brickman, a law professor at New York's Cardozo School of Law. ''Most

of this money should have gone to the states.'' Mr Brickman, an expert on legal fees, predicts that the flood of cash going to a small group of trial lawyers will finance a wave of mass litigation against other industries, including alcohol and fast food, on similar public-health grounds. This approach is already being pursued by big-city mayors against gun manufacturers and distributors with the help of some of the same law firms which represented the states in their suits against the tobacco companies.

The lawyers involved in the tobacco suits insist that the awards are fair, reflecting the risk they ran by taking on the tobacco firms when no one, including the state attorneys-general, thought they had much chance of winning. The lawyers worked without pay, and as part of the settlement have now agreed to submit to arbitration rather than insist on a share of the money the states will receive, which is what the contracts they signed with many state governments would have given them. ''The fees are huge,'' admits Philip Anderson, the president of the American Bar Association. ''But these lawyers were able to do something that governments have never been able to achieve on their own—assemble enough evidence to bring the tobacco industry to account. And the fees were agreed by sophisticated parties on both sides.''

Too much sophistication, in fact, may be the problem. Unusually, neither plaintiffs nor defendants in these cases seem to have had much interest in limiting the lawyers' fees. Officially, these fees are being paid by the tobacco firms, which spares the state attorneys-general the politically embarrassing task of having to pay the lawyers huge amounts of money out of their state's share of the settlement. The lawyers agreed to arbitration because they knew that state politicians could never have honoured their contingency contracts, which would themselves have become the subject of prolonged litigation. Most judges would have reduced the amounts the lawyers would get.

In any case, the arbitration is a mere figleaf. The money going tot he lawyers was clearly part of the overall amount that the tobacco companies were willing to pay to settle the case. Whatever the lawyers get, the states do not.

The reaction of the tobacco companies has also been suspiciously muted. Brown & Williamson, one of the firms, called the fee award ''obscene'', but the other companies said little. One reason may be that they do not really care about the size of the total fee award. Their deal with the states caps the amount they must pay all the states' lawyers of $500m a year. This will be divided by the lawyers according to their proportions of the overall fee award. Tobacco companies will also shell out another $1.25 billion over the next five years to pay off those lawyers who do not want to wait years to receive all their money. So the companies' exposure is limited, no matter what the lawyers get.

In effect, the lawyers are becoming joint business partners with the states and the tobacco companies in leaving a tax on smokers. The overall settlement has been widely misreported as giving the states $206 billion. But this is only the amount that they will receive in the first 25 years. The settlement actually runs in perpetuity, turning the tobacco firms into permanent tax-collection agencies for the states. The firms have already raised prices by about 50 cents a pack to pay for the settlement. The $500m they will be handing over to the lawyers annually will also be paid for by smokers.

If the total fee award to lawyers reaches $25 billion, these annual payments will continue for the next 50 years. If the outstanding fees are inflation-adjusted, as the arbitrators decided they should be in Florida, Mississippi and Texas, the payments to the lawyers and their heirs could go on for ever, because the $500m annual cap will not be inflation-adjusted. The tobacco firms are threatening to challenge the inflation-adjustment provision in the courts because they say it is not part of the national settlement agreement.

But inflation-adjusted or not, today's smokers—70% of whom earn less than $40,000 a year—will be paying the lawyers as well as the states, via the tobacco companies, for the rest of their (abbreviated) lives. Tobacco companies' bottom-lines will barely be affected. This is why tobacco shares rose after the settlement with the states was announced in November and barely reacted when the first gigantic fee awards to lawyers were made in December.

How the arbitrator came up with such a huge figure is something of a mystery. The awards range from 20–35% of what the three states will receive. But this is far more than the 8% fee agreed last May by the lawyers in Minnesota, the only state actually to take its tobacco case all the way to trial.

MORALES, FRIEND INDICTED IN TEXAS TOBACCO CASE—FORMER AG HAS DENIED WRONGDOING; FEDERAL CHARGES INCLUDE TAX EVASION

[From the Dallas Morning News, March 7, 2003]

(By George Kuempel)

AUSTIN.—Former Texas Attorney General Dan Morales and a lawyer friend were indicted on federal charges Thursday, accused of trying to defraud the state of hundreds of millions in legal fees from its suit against the tobacco industry.

Mr. Morales, a Democrat who lost a bid for governor last year, also was charged with illegally converting campaign funds to personal use, filing bogus income tax information and falsifying a bank loan application.

He and Marc Murr of Houston, who also was indicted, are expected to surrender to the FBI on Friday. They previously have denied wrongdoing.

U.S. Attorney Johnny Sutton called it ''a case of an elected official charged with abusing the public trust.''

''This indictment alleges he violated that trust by backdating contracts, forging government records and converting campaign contributions to personal use,'' Mr. Sutton said at the federal courthouse.

The 12-count indictment issued by a federal grand jury stemmed from a long-running investigation into payment of legal fees from the state's $17.3 billion settlement with tobacco companies when Mr. Morales was attorney general in 1998.

It's a case that has been at the center of a political wrangling for several years between Mr. Morales and Republicans. And it comes just weeks after his brother, San Antonio musician Michael Morales, pleaded guilty to attempting to extort $280,000 from Democrat Tony Sanchez during the campaign against Gov. Rick Perry.

Dan Morales, now a private lawyer in Austin, is accused of fraudulently trying to secure millions of dollars in fees for Mr. Murr for work on the tobacco case that he did not do by backdating contracts and forging government documents.

The indictments of Dan Morales and Marc Murr are another chapter in Texas' landmark $17.3 billion settlement with tobacco companies that has included twists, turns and reversals.

Initial debate: Gov. George W. Bush and state Attorney General John Cornyn, both Republicans, complained about $3.3 billion paid to five attorneys for their work on the 1998 settlement. Added intrigue: Mr. Morales said his friend Marc Murr of Houston was also among the state's tobacco lawyers and was due about $500 million. Mr. Morales had publicly hired the five private attorneys and disclosed their contracts; the deal with Mr. Murr was initially secret.

The Murr deal: Mr. Morales said Mr. Murr was hired to be a watchdog over the other lawyers and to advise him during the litigation. The other lawyers initially said that they had never heard of Mr. Murr, and later said he did little or no work on the case.

The initial inquiries: Mr. Cornyn, who succeeded Mr. Morales as attorney general in 1999, began investigating the Murr contract. Federal investigators started their inquiry into the deals and the documents.

The Murr money: In December 1998, Mr. Murr went before a national arbitration panel and was awarded $1 million over 30 years from tobacco companies. Unbeknownst to the other tobacco lawyers, Mr. Morales and Mr. Murr also formed a state arbitration panel in September 1998 that gave Mr. Murr $260 million—an award he contended was binding. He cited a Jan. 31, 1997, contract with the state as evidence.

Cornyn objects: In May 1999, Mr. Cornyn said that the Jan. 31, 1997, contract between Mr. Morales and Mr. Murr was a fake and did not exist when it supposedly was signed.

Sudden reversal: In U.S. District Court, Mr. Murr's attorney dropped the $260 million claim on May 6, 1999. Mr. Murr's attorney also told the court that at least one of the contracts signed by his client and Mr. Morales was backdated by as much as a year. Mr. Morales had denied any manipulation of the contract. He said the investigations are spawned by partisan political attacks.

Mr. Morales is reported to have hired Mr. Murr without the knowledge of the team of five high-profile trial lawyers he contracted to represent the state in its lawsuit against the big tobacco companies.

At one time, Mr. Murr stood to receive $520 million as his share of the $3.3 billion in fees awarded to the lawyers in the case.

His share was later reduced to $1 million, but he gave up his claim to the money when allegations arose that he had done no work on the case.

According to the indictment, Mr. Morales and Mr. Murr ''fabricated an outside counsel agreement, backdated to January 31, 1997, which purportedly required the State to pay a reasonable fee to Defendant Murr's corporation.''

As part of the ''scheme,'' the two men fabricated another outside counsel agreement, backdated to Oct. 17, 1996, which assigned 3 percent of the state's recovery to Mr. Murr's corporation.

''Defendant Morales directed a state employee to type and then backdate the bogus agreement. Three percent of the state's recovery was estimated to be $520 million,'' according to the indictment.

In May 1999, two forensic experts hired by The Dallas Morning News said that the Morales-Murr contract shows evidence of ''severe document manipulation.''

The private lawyers who handled the tobacco case were John Quinn and John Eddie Williams of Houston, Walter Umphrey and Wayne Reaud of Beaumont, and Harold Nix of Daingerfield. They have defended their actions in the case.

Mr. Morales surprised some when he announced plans in 1995 to sue several big tobacco companies to help recover the state's cost of treating patients suffering from tobacco-related illnesses.

But questions were raised about the fees by Republicans, including John Cornyn, who became attorney general in 1999 after Mr. Morales decided not to run again.

Mr. Cornyn began a state investigation, and Andy Taylor, a former assistant attorney general who headed that said of Mr. Morales: ''He's toast.

''We looked at the computer hard drives and could tell to the second when the backdating on the contracts occurred.''

Mr. Taylor, a Houston lawyer, said prosecutors have informed him that he will be called as a witness in the case. He said delays in the indictment probably were because of the lack of a permanent U.S. attorney for months before Mr. Sutton's appointment and confirmation.

Mr. Morales had slammed the inquiry as politically motivated. ''There's not one shred of evidence or a single document to support these lurid accusations.'' he said in 1999.

Micheal Ramsey, an attorney for Mr. Murr, said Thursday of the charges, ''My initial take is that it's unfair.''

Both men are accused of conspiracy and mail fraud, which can carry a penalty of up to five years in prison and a $250,000 fine.

The indictment also charges that Mr. Morales used $400,000 in campaign donations to buy a $775,000 house in Travis County and he is accused of understating by $400,000 his liabilities in applying for a $600,000 loan in 1999.

Making a false application on a loan application is a charge punishable by up to 30 years in prison and a $1 million fine.

According to the indictments, Mr. Morales defrauded the state, the Texas Ethics Commission, his contributors and others from 1997 and 1999 by converting political donations to personal use.

He is charged in another court with making false statements on his 1998 federal income tax return.

The indictment alleges that in his joint return filed with his wife, Mr. Morales listed their taxable income as $39,734 when he knew full well that ''their joint taxable income was substantially in excess'' of that amount.

THE CHARGES

Charges against former Attorney General Dan Morales include accusations that he:

Fraudulently tried to funnel $260 million in legal fees from the state tobacco case to a friend, who also was indicted.

Illegally converted nearly $400,000 in campaign contributions to his personal use.

Made false statements to get a $600,000 mortgage for his Travis County house.

Filed a false tax return that understated his taxable income for 1998.

[From the Wall Street Journal, March 10, 2003]

FAUST IN TEXAS II

The indictment of former Texas Attorney General Dan Morales lifts the lid ever so slightly over one of the mysteriously ignored scandals of the 1990s. We mean the national tobacco settlement that turned into a $500 million-a-year tax for the benefit of private tort lawyers.

That's the amount the tobacco companies agreed to pay in ''fees'' to private attorneys appointed by the state politicos on contingency. Four years later, an itinerant panel of three ''arbitrators'' is still moving from state to state to decide how this revenue stream, roughly a present value of $8 billion, will be divvied up.

Texas was crucial to starting the landslide toward a national settlement, and Mr. Morales selected the five lawyers who handled the state's case and would eventually receive an astounding $3.3 billion in fees. How these five were picked, though no part of last week's indictment, is an untold story in itself. Houston lawyer Joe Jamail, who waved off a chance to participate, told a grand jury Mr. Morales had demanded a $1 million gratuity to be named to the case.

Never mind. A million bucks would soon appear a hilariously trivial sum compared to the monumental fees the tobacco lawyers would receive. Seeing the sums that were up for grabs after the settlement was reached, Mr. Morales produced out of the blue a friend, lawyer Marc Murr, whom he claimed was entitled to $520 million. Mr. Morales even turned up a document, never seen before, testifying to a fee agreement.

The five private lawyers were apoplectic, insisting Mr. Murr had done little work and implying the contract was a forgery. Mr. Morales quickly retreated. He did not seek a third term as attorney general.

The Murr episode had not been forgotten, however, and last week the U.S. Attorney's office in Austin brought charges against Mr. Morales for making false statements and concealing documents in an effort to enrich his friend. Mr. Murr was also indicted.

Hallelujah. We can only hope this proves a sideshow to the main event. Mr. Jamail's allegations about how Mr. Morales picked the other five attorneys reportedly have been seconded by two other witnesses before a grand jury. Virtually overlooked has been the role of lawyer Walter Umphrey, one of the biggest beneficiaries of the tobacco settlement, in naming the supposedly ''independent'' chairman of the national arbitration panel that is still awarding millions of dollars in fees.

A shameful episode, the tobacco settlement essentially enacted a national sales tax outside any legislature and awarded a big chunk of the proceeds to private campaign contributors of the attorneys general who brought the suit. So vast have been the rewards, in publicity and money, that the AGs have now turned themselves into full-time buccaneers-in-arms of the private tort bar, preying on one industry after another in search of more such triumphs.

Belated accountability is better than none. We just hope prosecutors and grand juries won't stop with the Murr case.

Mr. CORNYN. Mr. President, I am pleased to join my colleague, Senator KYL, to introduce today this landmark legislation to clean up our civil justice system. This legislation would enact a badly needed reform to the way in which attorneys are paid in some of the Nation's largest cases. It is designed to address some of the worst abuses of our civil justice system that I have witnessed in my nearly thirty years in the legal profession as a lawyer in private practice, as a state trial and appellate judge, and as state attorney general.

This legislation, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003, ISCRAA, will combat the gross abuse of attorney contingent fee agreements, abuses which we have been witnessing at an increasing rate in recent years. The legislation will enforce attorneys' fiduciary duties to their clients in a small but important category of cases—those resulting in judgments greater than $100 million.

Contingent fee agreements can have an important role to play in our civil justice system. Sometimes, when people are injured but cannot afford to hire lawyers out of their own pockets, attorneys will accept the case with the expectation that, if their clients prevail, the attorney will be paid for his or her services out of the judgment or settlement that the attorney is able to secure for the client. Such agreements between attorneys and their clients are called contingent fee agreements, because the attorney's fee is contingent on the client obtaining a money judgment or settlement. Contingent fee agreements, properly understood and utilized, reward attorneys for their work in obtaining monetary recovery for their clients, and the risk that they take that, despite their hard work and best efforts, they are unable to obtain any recovery for the client at all.

Contingent fees can thus help ensure that plaintiffs with legitimate claims have the opportunity to obtain justice from our courts through the assistance of counsel. But contingent fees also present serious ethical problems for our legal system—particularly in cases in which the dollar amounts at stake are extraordinary, and result in a contingent fee award that overwhelmingly exceeds the relatively light or even negligible effort and risk actually undertaken by the attorneys.

Under the time-tested traditions of our legal system, clients hire attorneys with the understanding and expectation that the attorney is ethically, legally, and morally obliged to represent their best interests, and that the attorney will use his or her legal skills in order to produce the best possible result—not for the attorney, but for the client.

Thus, as my colleague has noted, contingent fee agreements are no ordinary agreements between consumers and businesses. It is a bedrock principle and well-established tenet of our Anglo-American system of justice that attorneys are not ordinary businessmen who can engage in hard bargaining with their customers, as courts have made clear on countless occasions. Rather, attorneys are officers of the court who bear a fiduciary duty to their clients. As fiduciaries, attorneys occupy a position of trust in their dealings with their clients, a trust which attorneys may not lawfully abuse.

One obligation that flows from this status as a fiduciary is the attorney's obligation not to charge an unreasonable or excessive fee. This obligation is a fundamental part of an attorney's ethical duties, universally recognized in the ethics rules of all 50 States. Courts have made clear, time and time again, that every attorney fee contract automatically and necessarily includes the requirement that the fee be a reasonable one, a fundamental and basic duty of all attorneys, and one that no provision of such agreements may abrogate.

ISCRAA affirms and reinforces the longstanding substantive law of attorneys' fiduciary duties, by providing a special mechanism to enforce those duties in a particularly high risk category of cases—a category that the courts themselves have singled out as posing special risks of unethical, windfall fees. Courts have noted that allowing standard contingency fee agreements in cases involving judgments of

$100 million or more have a distinct tendency of grossly overcompensating attorneys for their actual services rendered.

ISCRAA prevents attorneys from evading their obligation to charge a reasonable fee in extraordinarily large recovery cases, by effectively limiting awards to a generous multiple of reasonable hourly fees. State courts, Federal courts, and even trial lawyers' themselves have all recognized that a reasonable fee must be proportional to the attorney's actual efforts. ISCRAA codifies and enforces this principle, while continuing to guarantee lawyers ample and generous compensation for their efforts—using fee multipliers that are as generous as the most liberal limits adopted by state courts, and which are considerably more generous than the limits set by federal courts in $100 million cases.

This legislation thus promises to clean up our civil justice system and to repudiate the grossest abuses of our legal system. Make no mistake: Although all attorneys are supposed to uphold a strict ethical code, under which they are strictly forbidden from charging their clients unreasonable or excessive attorney fees, the temptation to abuse contingent fee agreements is a strong one, and even more so when the dollar amounts are truly extraordinary—such as in the $100 million cases that would be covered by this legislation. And make no mistake: the victim of such attorney fee abuse, and the beneficiary of this legislation, is not the defendant who pays the judgment—after all, the defendant pays the same total amount whether the money goes to the attorney or to the client. Rather, the real victim of this abuse, and the real beneficiary of this legislation, is the injured client, whose money is being taken away from the lawyer through an abusive contingent fee arrangement.

As my colleague has also noted, ISCRAA is unquestionably an appropriate exercise of Congress's power to regulate and protect interstate commerce, considering the large size of the litigations to which it applies. $100 million is a standard threshold used by the federal government to determine whether an economic transaction significantly affects interstate commerce.

But the most important reason for federal intervention in this area I have not yet mentioned, and I would like to take a moment to discuss it here: the gross abuses that we have already witnessed in large litigation fee awards. Recent experience amply demonstrates that, if the Federal Government does not act to prevent unethical and grossly abusive fee awards in massive, nationwide lawsuits, no one will. Moreover, recent experience further demonstrates that unreasonable fee payments in such suits threaten not just the attorneys' fiduciary obligations; they also place at risk the integrity of our governmental institutions. The unwholesome incentives created by windfall, unethical fee awards in large-scale litigations have induced some public officials to abandon their civic obligations.

The textbook example of the types of abuses that make ISCRAA necessary is the attorney fee arrangement awarded in the State lawsuits to recover tobacco-related Medicaid expenses. Individual law firms that represented the States in that litigation have been given hundreds of millions and sometimes even billions of dollars in fees. To date, approximately $15 billion in fees has been awarded to the tobacco settlement lawyers, to be paid out in $500-million-a-year increments. Attorneys representing just three of the States—Mississippi, Texas, and Florida—were awarded $8.2 billion in fees. In many cases, such fees were paid to attorneys who filed duplicate, copycat lawsuits at a time when settlement negotiations had already begun and the risk that the states would not recover any money was negligible. Yet these lawyers nevertheless received massive contingency fees, for suits that involved no real contingency. And for most of the tobacco settlement lawyers, the size of the fee awards bears no reasonable relation to the actual effort expended or risk involved.

There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Perhaps the most damning indictments come from those who took the plaintiffs' side in this litigation—including from plaintiff lawyers themselves. For example, Michael Ciresi, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that the Texas, Florida, and Mississippi lawyers' fee awards ''are far in excess of these lawyers' contribution to any of the state results.'' Similarly, former Food and Drug Administration Commissioner David Kessler, another leader in the fight against tobacco, has said that the states' private lawyers ''did a real service, but I think the fee is outrageous. All the legal fees are out control.'' Washington, D.C. lawyer and tobacco-industry opponent John Coale has denounced the fee awards as ''beyond human comprehension'' and stated that ''the work does not justify them.'' Even the Association of American Trial Lawyers, the nation's premier representative of the plaintiffs bar, has condemned attorney fees requested in the state tobacco settlement. The President of ATLA has noted: ''Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite the scrutiny, of the courts. ATLA generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars.''

This letter, written in 1997, only concerned one of the Florida lawyers' request for attorney fees. Ultimately, Florida's private counsel was awarded a total of $3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff—and not the defendant.

Perhaps the best gloss on the tobacco fee awards is that provided by Professor Lester Brickman, a professor of law at Cardozo Law School and noted authority on legal ethics and attorney fees. Professor Brickman has stated:

''Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be 'clearly excessive.' Indeed, that standard has now been superseded in most States by an even more rigorous standard: fees have to be 'reasonable.' Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands—and even hundreds of thousands—of dollars an hour, reasonable? I think to ask the question is to answer it.''

The attorney fees awarded in the state tobacco settlement are simply indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement, MSA, that resolved 46 of the states' litigation. Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA. Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest fee awards of all, believed to amount to over $2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. Revealingly, the third arbitrator, a retired Federal judge appointed by President Carter, dissented from the key fee decisions.

As incredible as the MSA fee awards and the arbitration procedures may seem, even more dubious is the process by which many of the law firms that participated in this lucrative litigation were selected in the first place to represent the states.

In my home State of Texas, trial lawyers have accused the then-state attorney general of demanding $1 million in campaign contributions in exchange for their being hired to represent the state in the tobacco litigation. One prominent lawyer—a former president of the Texas Trial Lawyers Association—has since said that the attorney general's solicitation was so blatant that ''I knew th[at] instant . . . that I

could not be involved in the matter.'' He even later wondered if the meeting had been a ''sting operation.'' Another lawyer simply characterized his encounter with the attorney general as a bribery solicitation.

This former Texas attorney general was recently indicted on Federal charges of attempting to fraudulently divert $260 million in tobacco-settlement legal fees to one of his personal friends. He had given a sworn affidavit that this lawyer had served as Texas' ''primary adviser'' in its tobacco lawsuit—despite the apparent fact that the lawyer had attended no court hearings, depositions, or strategy meetings, wrote no memos or legal briefs about the case, and apparently never even spoke to any of the other attorneys. The attorney general even went so far as to forge and fraudulently backdate documents in order to win his friend a share of the tobacco settlement fee.

As for the five law firms that actually did represent Texas in the tobacco litigation, they filed relatively late lawsuits that were based on other lawyers' work—and yet, despite the minimal energy expended on those suits, were awarded $3.3 billion in attorney fees. This award amounts to compensation that, even assuming that the attorneys worked all day every day during the entire period of the litigation, remains well in excess of $100,000 an hour. As one newspaper editorial has noted, for the amount of money that these lawyers were awarded, Texas could hire 10,000 additional teachers or policemen for ten years. Instead, four of these firms gave the attorney general $150,000 in campaign contributions in recent years.

Texas' experience is not an isolated example. In other states as well, lawyers' participation in the tobacco litigation appears to have been the product of political favoritism—and to have resulted in unfathomable fees that bear no reasonable relation to the services provided. For example: New Jersey: The private in-state lawyers who represented this state in the tobacco litigation have admitted that they had no mass-tort litigation experience and played no role in the state settlement talks. They have also admitted that all the key work in the state's lawsuit was done by out-of-state firms—the in-state firms' principal work was drafting pro hac vice motions to have these outside lawyers admitted in New Jersey courts. Any work that the New Jersey lawyers did was submitted to the outside lawyers, who made all of the substantive arguments. Result: these in-state lawyers were awarded $350 million in the MSA fee arbitration. Connections: the New Jersey lawyers were an inside group of past presidents of the New Jersey trial lawyers' association. The State refused to even consider hiring a nonprofit firm to conduct the New Jersey lawsuit.

Pennsylvania: Settlement talks had already begun, the states' tobacco litigation was being resolved, and all of the legal theories already had been developed long before the Pennsylvania state suit was filed. Result: Pennsylvania's private lawyers were awarded $50 million in the MSA arbitration—equivalent to 1000 percent of a reasonable hourly rate. As one expert has noted, ''there's not $50 million of work in there.'' Connections: the two law firms that the state Attorney General selected to conduct the litigation were among his top campaign contributors. The firms were awarded no-bid contracts. As one Pennsylvania commentator has noted, ''obviously, it was a political kind of thing.''

Maryland: Billionaire tort lawyer Peter Angelos demanded a one billion dollar fee for his work on that State's case, even though, according to the State Senate President, the State legislature had retroactively ''changed centuries of precedent to ensure [Angelos] a win in the case.'' Angelos ultimately received an accelerated $150 million payment for this no-risk lawsuit.

Louisiana: The private law firms that represented the State in the tobacco litigation were awarded $575 million. The MSA arbitration panel actually increased this award on the ground that the State government—the lawyers' supposed client—was opposed to suing tobacco companies. The Louisiana fee award amounts to almost $7,000 an hour, based on the lawyers' estimate that they worked a total 85,000 hours. Moreover, this estimate is unverifiable, because the state's private lawyers kept no billing records—as the attorney general explained, ''I wasn't that big on hourly or written reports.'' The dissenting member of the arbitration panel simply noted that the Louisiana fee award ''shocks the conscience'' The single biggest beneficiary of this largesse—receiving $115 million in attorney fees—was a law firm based in Lake Charles, the hometown of the state's attorney general. This firm and the next largest fee recipient had donated over $42,000 to the attorney general's political campaigns. Together, all of the firms that represented Louisiana gave more than $100,000 to the attorney general in the years before they were selected to participate in the state's tobacco team.

Ohio: The lawyers representing this State received fees estimated to exceed $50,000 per hour, despite the fact that, according to independent observers, ''all of the legal issues were resolved long before these Ohio lawyers stepped up to the plate.'' The state's outside counsel had donated $26,000 in campaign contributions to the State attorney general prior to their appointment to the state's tobacco team. After the attorney general chose one private lawyer to serve as the state's ''lead special counsel,'' that lawyer hired one of the attorney general's top aides for an undisclosed sum in order to—in the lawyer's own words—''help me get acquainted with a technique called PowerPoint.'' When told that ''there were many people in Ohio capable of doing a PowerPoint presentation,'' the state's outside counsel responded that this particular attorney general's aide ''was the only one I knew of.''

Massachusetts: According to other tobacco plaintiffs' lawyers, Massachusetts's suit piggybacked on the work of other lawyers and was not pivotal to the outcome of the tobacco litigation. Result: $775 million was awarded to the Massachusetts lawyers in the MSA arbitration.

New York: When this State's then-attorney general hired private counsel to represent the State in its tobacco lawsuit, tobacco companies already had paid $15 billion to Florida and Mississippi for identical claims and a national settlement agreement already was under discussion. As one local anti-tobacco leader has noted, ''these were copycat lawsuits, there wasn't all that much work to do.'' The firms' primary job was to collect New York-specific data in order to calculate damages. Ultimately, the New York firms represented the State for just 13 months. And they received a fee award of $625 million. This amounts to at least $14,000 an hour, for a lawsuit that by all accounts involved no risk. The dissenting member of the arbitration panel has denounced the award as ''an astronomical sum unrelated to, the attorneys', efforts or achievements.'' The New York firms had contributed more than $250,000 to New York politicians and their campaign organizations in the years preceding their selection - and another $200,000 after the State settlement.

Wisconsin: The Wisconsin lawyers' tobacco litigation work has been described as chiefly consisting of media and public relations efforts on their own behalf. Their billing records included time spent selecting office space and buying furniture. One lawyer effectively billed $3,000 to the State for reading an article in a Madison newspaper. The lawyers also billed the State for limousine rides around the state, trips on private jets, and stays at luxury hotels. Result: $75 million was awarded to the Wisconsin lawyers. Based on the law firms' records of the total number of hours they devoted to the case—including work by paralegals—this fee amounts to $3,000 per hour.

Missouri: A State supreme court justice in Missouri resigned his post in order to join one of the private law firms expected to receive a portion of the MSA arbitrators' fee award. Ultimately, the firms representing the State spent just 5 months on the state's lawsuit. They received a fee award of $111 million. One State leader has described the award as ''the biggest rip-off in the 180-year history of the state.'' The law firms receiving these fees had donated more than $500,000 to State politicians and parties in the years leading up to their selection as the State's outside counsel.

These examples are too numerous to dismiss. In State after State, the temptations created by the massive, windfall fees awarded in the Medicaid tobacco settlement corrupted not only lawyers involved, but the government as well. The fee awards poisoned everything that they touched. No one who examines these events closely—who surveys the obscene fee awards, and the political cronyism that determined who benefited—can disagree that this must never be allowed to happen again.

As a final point, I would like to address a question that has been raised with regard to remedy. Some have argued that nothing can be done to correct the excesses of the tobacco settlement fee awards—even with regard to fees that are still being or have yet to be paid. On several occasions, State judges who were called upon to approve their State's tobacco settlement have also, on their own initiative, inquired into the apparent unreasonableness of the fees awarded. In each case, both the plaintiffs' lawyers—and in some cases, even State officials—have challenged the State courts' authority to act. They have argued that these courts lack jurisdiction to review a national settlement, and that excessive fees cannot be restored to the State. One state's attorney general implicated in these events has argued that it is a ''misconception'' that the tobacco settlement ''attorneys' fees are coming out of the public's pocket. That is not the case. They [sic] defendants have agreed to pay these fees.''

Because of the way that the MSA fee payments are structured, no lawyer's award comes out of any one particular, identifiable State's recovery. Instead, all of the lawyers are being paid from one of two separate accounts, each of which is funded by the tobacco companies.

It is a mistake, however, to contend that, because the MSA fee payments are made directly from defendants to plaintiffs' lawyers—without ever formally or actually passing through the plaintiffs' hands—they are immunized against ethical scrutiny or correction. It is well and long established in our law that fee awards originate as the property of the client regardless of how the fee agreements are structured. The courts have been very clear on this point. As they have stated: ''The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney.''

''[A]ttorneys' fee provisions exist for the benefit of parties and not the attorneys. . . . Several jurisdictions have noted that the real party in interest with regard to fees is the client and not the attorney.''

''A judgment for costs is a judgment in favor of the party, and not of his attorney, and the money represented by the costs is the property of the party.''

''[T]he award of attorney fees [is] made not to the attorneys but to the litigant who was personally liable to the attorneys. This is also the view in other states when the courts award attorney fees.''

''An award of attorney's fees belongs to the client and not the attorney.''

Indeed, an award of attorney fees is generally taxable as income to the client. In a recent case, the U.S. Court of Appeals for the Ninth Circuit noted that a plaintiff's obligation to compensate the law firm that represented him ''was satisfied by [the defendant]. The payment was therefore to [the client]. The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed.'' The Ninth Circuit emphasized that the fact ''[t]hat [the client] never laid hands on the money paid to the lawyers does not obliterate their constructive receipt.'' In other words, the fee award belongs to the client, regardless of how the award is made.

The rule that fee awards belong to the client is strongly supported by important policy considerations. It is necessary because any other rule would be an invitation to collusion and self-dealing between plaintiffs' lawyers and defendants. Again, the courts have been very clear on this point. As the Third Circuit has noted: ''[A] defendant is interested only in disposing of the total claims asserted against it, and the allocation between the [plaintiff's] payment and the attorneys' fees is of little or no interest to the defense. Moreover, the divergence in class members' and class counsel's financial incentives creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.''

The Second Circuit has made the same point, noting: ''Defendants, once the settlement amount has been agreed to, have little interest in how it is distributed and thus no incentive to oppose the [attorneys] fee. Indeed, the same dynamic creates incentives for collusion—the temptation for lawyers to agree to a less than optimal settlement in exchange for [generous fees].''

The Ninth Circuit has also addressed the question of ''whether a class member has standing to appeal class counsel's attorney fee and cost award when that award is payable by the defendant independently, and not out of the class settlement.'' The court concluded that ''[e]ven if class counsel's attorney fees are not to be paid from the class settlement . . . , the aggregate amount of the attorney fees and the class settlement payments may be viewed as ''a constructive common fund.'' The court reasoned that ''[i]f . . . class counsel agreed to accept excessive fees and costs to the detriment of class plaintiffs, then class counsel breached their fiduciary duty to the class. If that were the case, any excessive award could be considered property of the class plaintiffs, and any injury they suffered could be at least partially redressed by allocating to them a portion of that award.''

As several commentators have noted, the policy considerations underpinning the rule that fee awards belong to the client apply with full force to the State tobacco settlement. Indeed, that settlement could serve as a textbook example for why this rule exists. As Professor Brickman has noted: ''To the tobacco companies, dollars are dollars, whether paid to States or paid to lawyers. So the real amount on the bargaining table was not the $246 billion that the states settled for, but a larger sum, including the amount to be paid to the attorneys. . . . Stated simply, because dollars are fungible, the fees are coming out of the settlements.''

Even foreign commentators have noted that the State tobacco settlement's ''arbitration is a mere figleaf. The money going to the lawyers was clearly part of the overall amount that the tobacco companies were willing to pay to settle the case. Whatever the lawyers get, the states do not.''

And this point has not been lost upon members of Congress. Representative CHRIS COX, R–CA, has testified on the matter: ''It is specious to argue that, billions of dollars, in fees are not being diverted out of funds available for public health and taxpayers. The tobacco industry is willing to pay a certain sum to get rid of these cases. That sum is the total cost of the payment to the plaintiffs and their lawyers. It is a matter of indifference to the industry how that sum is divided—75 percent for the plaintiffs and 25 percent for their lawyers, or vice versa. That means that every penny paid to the plaintiffs' lawyers—whether it is technically ''in'' the settlement or not—is money that the industry could have paid to the state or the private plaintiffs. Excessive attorneys' fees in this case will not be a victimless crime.''

These authorities and their reasoning should be more than sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defenders of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That fee comes out of all of the State's recoveries. All excessive or unreasonable fees should be restored to all 50 of the States.

Senator KYL has already presented estimates of the monetary recovery each State can expect if ISCRAA is enacted. I would simply point out here that, according to those estimates, Texas has been charged excessive and unreasonable attorney fees in the amount of $667 million, and therefore would recover those funds if this legislation is adopted.

ISCRAA's return of unethical tobacco-settlement fee awards to the

states is manifestly proper in light of the fact that all fee awards are the property of the client, and the attorney is entitled only to a reasonable fee. No attorney is above these ethical rules and obligations. They cannot be waived or ignored. And in light of our experience with the State tobacco settlement fee awards, and their effect on our public officials, these ethical duties must be carried out and enforced strictly and fully.

Our Federal and State courts generally do a good job of protecting consumers and enforcing the rights of all Americans. But there are problems in our courts that require attention and significant reform. Class action abuse not only threatens the integrity and the perception of rationality in our nation's courts, it also strongly hinders economic and job growth. Tort reform is badly needed to rescue many industries, especially our health care industry, from abuses of our legal system. The judicial confirmation process at the federal level has become bitter, severe and destructive, and that broken process poses a serious threat to judicial independence and the quality and efficiency of our courts. And abusive attorney fee arrangements make a mockery of our civil justice system, all while enriching a small band of unscrupulous litigators at the expense of the real victims, their clients.

To enforce the longstanding fiduciary duty of all attorneys to charge only a reasonable fee, in a class of cases that poses heightened risks of abuse and special significance to the national economy, I urge that this Senate consider expediently, and approve quickly, this important measure, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 118—SUPPORTING THE GOALS OF THE JAPANESE AMERICAN, GERMAN AMERICAN, AND ITALIAN AMERICAN COMMUNITIES IN RECOGNIZING A NATIONAL DAY OF REMEMBRANCE TO INCREASE PUBLIC AWARENESS OF THE EVENTS SURROUNDING THE RESTRICTION, EXCLUSION, AND INTERNMENT OF INDIVIDUALS AND FAMILIES DURING WORLD WAR II

Mrs. BOXER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 118

Whereas, on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, which authorized the exclusion of 120,000 Japanese Americans and legal resident aliens from the West coast of the United States and the internment of United States citizens and legal permanent residents of Japanese ancestry in internment camps during World War II;

Whereas the freedom of Italian Americans and German Americans was also restricted during World War II by measures that branded them as enemy aliens and included required identification cards, travel restrictions, seizure of personal property, and internment;

Whereas President Gerald Ford formally rescinded Executive Order 9066 on February 19, 1976, in his speech, ''An American Promise'';

Whereas Congress adopted legislation which was signed by President Jimmy Carter on July 31, 1980, which established the Commission on Wartime Relocation and Internment of Civilians (the ''Commission'') to investigate the claim that the incarceration of Japanese Americans and legal resident aliens during World War II was justified by military necessity;

Whereas the Commission held 20 days of hearings and heard from over 750 witnesses on this matter and published its findings in a report entitled ''Personal Justice Denied'';

Whereas the Commission concluded that the promulgation of Executive Order 9066 was not justified by military necessity and that the decision to issue the order was shaped by ''race prejudice, war hysteria, and a failure of political leadership'';

Whereas Congress enacted the Civil Liberties Act of 1988, in which it apologized on behalf of the Nation for ''fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry'';

Whereas President Ronald Reagan signed the Civil Liberties Act of 1988 into law on August 10, 1988, proclaiming that day to be a ''great day for America'';

Whereas the Civil Liberties Act of 1988 established the Civil Liberties Public Education Fund, the purpose of which is ''to sponsor research and public educational activities and to publish and distribute the hearings, findings, and recommendations of the Commission on Wartime Relocation and Internment of Civilians so that the events surrounding the exclusion, forced removal, and internment of civilians and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood'';

Whereas Congress adopted the Wartime Violation of Italian Americans Civil Liberties Act, which was signed by President Bill Clinton on November 7, 2000, and which resulted in a report containing detailed information on the types of violations that occurred and lists of individuals of Italian ancestry that were arrested, detained, and interned;

Whereas the Japanese American community recognizes a National Day of Remembrance on February 19th of each year to educate the public about the lessons learned from the internment to ensure that such an event never happens again; and

Whereas the Day of Remembrance provides an opportunity for all people to reflect on the importance of justice and civil liberties during times of uncertainty and emergency: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the historical significance of February 19, 1942, the date President Roosevelt signed Executive Order 9066, which restricted the freedom of Japanese Americans, German Americans, Italian Americans, and legal resident aliens through required identification cards, travel restrictions, seizure of personal property, and internment; and

(2) supports the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the restrictions endured by the people in those communities as a result of Executive Order 9066.

Mrs. BOXER. Mr. President, today I am submitting a resolution to support the goals of the Japanese American, German American and Italian American communities in recognizing a ''National Day of Remembrance.'' This resolution will increase public awareness of the events surrounding the restriction, exclusion and internment of individuals and families during World War II.

On February 11, 1942, President Franklin D. Roosevelt signed Executive Order 9066, which authorized the incarceration of over 120,000 Americans of Japanese, Italian and German ancestry. Not until 34 years later—on February 19, 1976—was E.O. 9066 formally rescinded by President Gerald Ford.

Since then, Congress and Presidents Carter, Reagan, and Clinton have recognized the ''fundamental violation of the basic civil liberties and constitutional rights'' of individuals detained and interned under E.O. 9066. The Commission on Wartime Relocation and Internment of Civilians established by Congress under President Carter concluded that the decision to issue E.O. 9066 was shaped by ''race prejudice, war hysteria, and a failure of political leadership.''

In the last half century, organizations, families and individuals all over the country have observed a day of remembrance on February 19 to educate others of the distinct experiences of Japanese, Italian, and German Americans during World War II. Congressional recognition of this ''National Day of Remembrance'' would assist in promoting dialogue and education of Americans on this very important event in our history.

We need to recognize and support the efforts to raise awareness of the experiences of interned Americans. I urge my colleagues to support this resolution.

SENATE RESOLUTION 119—EXPRESSING THE SENSE OF THE SENATE THAT THERE SHOULD BE PARITY AMONG THE COUNTRIES THAT ARE PARTIES TO THE NORTH AMERICAN FREE TRADE AGREEMENT WITH RESPECT TO THE PERSONAL EXEMPTION ALLOWANCE FOR MERCHANDISE PURCHASED ABROAD BY RETURNING RESIDENTS, AND FOR OTHER PURPOSES

Ms. COLLINS (for herself, Mr. BAUCUS, Mr. BINGAMAN, Mr. DOMENICI, and Mrs. CLINTON) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 119

Whereas the personal exemption allowance is a vital component of trade and tourism;

Whereas many border communities and retailers depend on customers from both sides of the border;

Whereas a United States citizen traveling to Canada or Mexico for less than 48 hours is exempt from paying duties on the equivalent of $200 worth of merchandise on return to the United States, and for trips over 48 hours United States citizens have an exemption of up to $800 worth of merchandise;

Whereas a Canadian traveling in the United States is given no exemption for trips of less than 24 hours;

Whereas a Canadian traveling in the United States is allowed a duty-free personal exemption allowance equivalent to, in Canadian currency—

(1) $50 worth of merchandise, if the trip is over 24 hours but not over 48 hours;

(2) $200 worth of merchandise, if the trip is over 48 hours but not more than 7 days; and

(3) $750 worth of merchandise, if the trip is for over 7 days;

Whereas Mexico has a 2-tiered personal exemption allowance for its returning residents, set at the equivalent of $50 worth of merchandise for residents returning by car and the equivalent of $300 worth of merchandise for residents returning by plane;

Whereas Canadian and Mexican retail businesses have an unfair competitive advantage over many American businesses because of the disparity between the personal exemption allowances among the 3 countries;

Whereas the State of Maine legislature passed a resolution urging action on this matter;

Whereas the disparity in personal exemption allowances creates a trade barrier by making it difficult for Canadians and Mexicans to shop in American-owned stores without facing high additional costs;

Whereas the United States entered into the North American Free Trade Agreement with Canada and Mexico with the intent of phasing out tariff barriers among the 3 countries; and

Whereas it violates the spirit of the North American Free Trade Agreement for Canada and Mexico to maintain restrictive personal exemption allowance policies that are not reciprocal: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Trade Representative and the Secretary of the Treasury, in consultation with the Secretary of Commerce, should continue discussions with officials of the Governments of Canada and Mexico to achieve parity by harmonizing the personal exemption allowance structure of the 3 NAFTA countries at or above United States exemption levels.

Ms. COLLINS. Mr. President, I am pleased today to introduce a resolution seeking parity among the United States, Canada, and Mexico with respect to the personal exemption allowance for merchandise purchased abroad by returning residents. I am especially pleased to be joined today by Senators BAUCUS, BINGAMAN, DOMENICI, and CLINTON as original cosponsors.

For Maine citizens living near the U.S./Canadian border, moving freely and frequently between the two countries is a way of life. Cross-border business and family relationships abound. The difference in personal exemption allowances, however, puts Maine businesses near the Canadian border at a considerable disadvantage in relation to their Canadian counterparts.

A United States citizen traveling to Canada for fewer than 24 hours is exempt from paying duties on the equivalent of $200 worth of Canadian merchandise. For trips over 48 hours, the exemption increases to $800 worth of merchandise. This means that a Mainer living in a border community has the option to shop in both the United States and in Canada, seeking the best price and products. Under U.S. laws, Canadian stores are able to serve both Canadian and American customers, and, because of the high exemption level, Americans are able to bring home from Canada a significant amount of merchandise duty free.

Unfortunately, these advantages are a one way street. A Canadian citizen is given no dutyfree personal exemption allowance for trips under 24 hours. Canadian Customs is instructed to begin collecting duties and taxes on merchandise as long at it can collect three Canadian dollars. Canadian duty and sales tax rates range from seven to fifteen percent depending on the policies of the Canadian province; Nova Scotia, New Brunswick, and Newfoundland enforce a 15 percent Harmonized Sales Tax, HST on all imports. Assessing a 15 percent combined duty and tax rate, Canadian Customs begins to collect the duty and tax on the equivalent of only approximately $14 worth of U.S. goods. Compare this to the $200 limit given to U.S. citizens.

This means that a Canadian shopping for the day in Fort Kent, Madawaska, or Calais can bring home only $14 worth of merchandise before a 15 percent duty is imposed. The exemption limit rises to a mere $50 for trips between 24 and 48 hours. Restrictions such as these are a significant deterrent to Canadians who would otherwise shop in Maine communities.

In August of 2002, I brought two top Treasury officials to Maine to meet with our affected border communities to hear their concerns about this problem. In the meeting held in Calais, small business owners such as Louis Bernardini, owner of the Boston Shoe Store, and Bill Francis, owner of Knock on Wood gift shop, explained that Canada's duty barriers cost their businesses thousands of dollars in estimated revenue on an annual basis. These losses are compounded by other challenges facing their and other small businesses—an economic recession, the weakness of the Canadian dollar, and additional restrictions on border security following September 11.

This discrepancy in personal exemption allowances gives an enormous competitive advantage to the Canadian and Mexican retailers in border communities. It gives the retailers of our neighbors to the north and the south access to the cross-border shoppers while, in effect, denying that same opportunity for American retailers. This is not fair nor free trade.

In June 2002, I wrote to the Bush administration requesting that it raise the issue with its Canadian counterparts as soon as possible. Former Treasury Secretary O'Neil responded to my request and wrote to John Manley, the Canadian Minister of Finance and Deputy Prime Minister, asking him to adopt ''a more trade-friendly and less administratively burdensome system of personal duty allowances.''

I had the opportunity to meet personally with John Manley this week regarding border issues. During this meeting, I told him that Canada's restrictive personal exemption policies threaten the economies of its neighboring communities. I was encouraged by Minister Manley's understanding of my concerns and acknowledgment that this issue needs to be resolved.

Currently, Treasury officials are actively negotiating with Canada to try to resolve the problem. The resolution I am introducing today expresses the Sense that the Secretary of the Treasury and the United States Trade Representative should continue discussions with officials of the Governments of Canada and Mexico to achieve parity with respect to the personal exemption allowance structure. Passage of this amendment will send a clear message to these governments that the duty disparity unfairly disadvantages American businesses and must be corrected. I urge my colleagues to support its swift passage.

SENATE RESOLUTION 120—COMMEMORATING THE 25th ANNIVERSARY OF VIETNAM VETERANS OF AMERICA

Mr. JEFFORDS submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 120

Whereas the year 2003 marks the 25th anniversary of the founding of Vietnam Veterans of America;

Whereas the history of Vietnam Veterans of America is a story of the United States' gradual recognition of the tremendous sacrifices of its Vietnam-era veterans and their families;

Whereas Vietnam Veterans of America is dedicated to advocating on behalf of its members;

Whereas Vietnam Veterans of America raises public and member awareness of critical issues affecting Vietnam-era veterans and their families;

Whereas the local grassroots efforts of Vietnam Veterans of America chapters, such as Chapter One in Rutland, Vermont, which was founded 23 years ago in April of 1980, have greatly contributed to the quality of the lives of veterans in our Nation's communities;

Whereas Vietnam Veterans of America promotes its principles through volunteerism, professional advocacy, and claims work; and

Whereas the future of Vietnam Veterans of America will rely not only on its past accomplishments, but also on the future accomplishments of its members, and these will ensure that Vietnam Veterans of America remains a leader among veterans advocacy organizations: Now, therefore, be it

Resolved, That the Senate—

(1) commemorates the 25th anniversary of the founding of Vietnam Veterans of America, and commends it for its efforts in the advancement of veterans rights, which set the standard for all other veterans organizations around the country;

(2) asks all Americans to join in the celebration of the 25th anniversary of Vietnam Veterans of America, and its 25 years of advocacy on behalf of Vietnam veterans; and

(3) encourages Vietnam Veterans of America to continue to represent and promote its goals in the veterans' community and on Capitol Hill, and to continue to keep its national membership—consisting of 45,000 members and 600 chapters—strong.

Mr. JEFFORDS. Mr. President, I rise today with great pride and enthusiasm

to submit a Senate resolution commemorating the 25th Anniversary of the founding of the Vietnam Veterans of America. The resolution also points out that April marks the 23rd Anniversary of the founding of Vietnam Veterans of America's first local chapter in my hometown of Rutland, VT.

The VVA is a Congressionally chartered national veterans service organization exclusively dedicated to Vietnam-era veterans and their families. In the late 1970s, America had come through its longest and most divisive war. Many of the millions of veterans who served during that period felt that the veteran community and the Federal Government failed to address their specific concerns.

In January 1978, Bobby Muller and a small band of Vietnam veterans came to Washington, DC to create an advocacy organization to push for Federal action to address the needs of this unique veteran population. The VVA, initially known as the Vietnam Veterans Coalition and then the Council of Vietnam Veterans, went to work focusing first on the dissemination of government information and coordination of relations between the Federal Government and veterans.

In time, it became clear that, like many other organizations, this one could not survive simply by making a good case for its initiatives—it needed to build a strong membership base in order to wield political power. By the summer of 1979, the new Vietnam Veterans of America began to focus on building its membership.

While the growth of the organization was slow initially, a breakthrough came following resolution of the American Hostage Crisis in Iran in January 1981. While watching the jubilant homecoming given the American hostages, many Vietnam veterans were poignantly reminded of the hostile reception they faced upon their return home. Vietnam veterans began to clamor for action in the form of programs that would place the latest generation of wartime veterans on the same footing as veterans from previous wars.

The strength of the organization grew with the increase in membership. The public also became more willing to deal with the neglected veterans issues unique to the Vietnam War. An important manifestation of this increased public awareness was the opening of the Vietnam Veterans Memorial in November 1982. The activities around the Memorial rekindled a sense of camaraderie among the veterans and the feeling of a shared experience too significance to ignore.

Since then, the VVA has broadened the scope of services it provides to its membership, including the founding of the Vietnam Veterans of America Legal Services that provides assistance to veterans seeking benefits and services from the Federal Government. An example of the critical information dissemination function of the VVA is the publication of information on the manifestations of Post-Traumatic Stress Disorder and Agent Orange illnesses, as well treatment and compensation available to veterans.

The legislative accomplishments of the VVA through its high-profile presence on Capitol Hill have been impressive. Organizations like Vietnam-era Veterans in Congress have served the overall membership well by supporting the pragmatic agenda of the VVA and championing its founding principle that ''Never again will one generation of veterans abandon another.''

Today, the VVA has a national membership of 45,000 in more than 600 chapters. VVA state councils in 43 states coordinate the activities and programs of its national organization, ensuring that grassroots input to Congress continues to ensure that the Federal Government meets its obligations to its Vietnam veterans.

This resolution expresses the Senate's gratitude to the Vietnam Veterans of America for its strong advocacy on behalf of its members and wishes it continued success in the years to come.

SENATE CONCURRENT RESOLUTION 35—HONORING THE 129 SAILORS AND CIVILIANS LOST ABOARD THE U.S.S. THRESHER ON APRIL 10, 1963, AND URGING THE SECRETARY OF THE ARMY TO ERECT A MEMORIAL TO THIS TRAGEDY IN ARLINGTON NATIONAL CEMETERY

Mr. SUNUNU (for himself, Mr. GREGG, Ms. SNOWE, and Ms. COLLINS) submitted the following concurrent resolution; which was referred to the Committee on Veterans' Affairs:

S. CON. RES. 35

Whereas the U.S.S. Thresher was first launched at Portsmouth Naval Shipyard on July 9, 1960;

Whereas the U.S.S. Thresher departed Portsmouth Naval Shipyard for her final voyage on April 9, 1963, with a crew of 16 officers, 96 sailors, and 17 civilians;

Whereas the mix of that crew reflects the unity of military and civilian personnel in the naval submarine service, and in the protection of the Nation;

Whereas at approximately 7:47 a.m. on April 10, 1963, while in communication with the surface ship U.S.S. Skylark, and approximately 300 miles off the coast of New England, the U.S.S. Thresher began her final descent;

Whereas the U.S.S. Thresher was declared lost with all hands on April 10, 1963; and

Whereas the crew of the U.S.S. Thresher demonstrated the ''last full measure of devotion'' in service to this Nation, and this devotion characterizes the sacrifices of all submariners, past and present: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) remembers with profound sorrow the loss of the U.S.S. Thresher and her gallant crew of sailors and civilians on April 10, 1963; and

(2) urges the Secretary of the Army to erect a memorial in Arlington National Cemetery, to be paid for with private funds, honoring the crew of the U.S.S. Thresher, and to all United States submariners who have lost their lives in the line of duty.

Mr. SUNUNU. Mr. President, last week, the U.S. Senate unanimously passed S. Res. 102, a resolution I introduced that pays tribute to the 129 officers, sailors and civilians who tragically lost their lives aboard the nuclear submarine, U.S.S. *Thresher.*

Today, on the 40th anniversary of the loss of the *Thresher,* I once again join with Senators GREGG, SNOWE and COLLINS to introduce legislation which calls on the Secretary of the Army to erect a memorial at Arlington National Cemetery to honor the crew who were lost on the *Thresher* as well as other nuclear submariners lost at sea. Companion legislation is being introduced in the House of Representatives by Congressman JEB BRADLEY.

As I stated last week, the U.S.S. *Thresher* was built at the Portsmouth Naval Shipyard and commissioned in August of 1961 as the lead vessel in a new class of nuclear-powered attack submarines. After putting to sea, she was subjected to more than a year of tests along the eastern coast of the United States. In late 1962, the *Thresher* returned to New England for an overhaul where she remained until the spring of 1963.

On April 9, 1963, the *Thresher* departed the Portsmouth Naval Shipyard to conduct deep-diving exercises some 200 miles off the coast of New England. In the morning hours of April 10, 1963, after reaching her assigned depth, the U.S.S. *Thresher,* signaled her companion surface ship, the U.S.S. *Skylark,* that it was experiencing difficulties. Shortly thereafter, the crew of the *Skylark* realized that something had gone wrong as they heard the sound of the *Thresher* breaking apart.

The inquiry following the loss of the *Thresher* identified the probable cause of the accident as a failure in the piping which led to a subsequent loss of power and ultimately an inability to blow the ballast tanks which would have allowed the *Thresher* to rise. As a result of the inquiry, the Navy initiated key changes aimed at ensuring the safety of future submarines, and by extension, their crews. The safety of today's modern submarine fleet is a direct result of the lessons learned following the loss of the *Thresher.*

Those who have served aboard America's submarine fleet over the years have genuine appreciation and gratitude for the sacrifice made by the crew of the *Thresher.* While modern submariners admire and respect these heroes, their sacrifice is largely unknown to many Americans. That is why I believe a memorial on the hallowed ground of Arlington National Cemetery to the crew of the U.S.S. *Thresher* will allow the memory of these 129 brave individuals to be given the honor and respect they are due. In addition to paying tribute to the *Thresher,* the memorial would honor all nuclear submariners who have lost their lives at sea.

Mr. President, I am aware that there are space constraints at Arlington. However, the memorial we are calling for would encompass a limited area—approximately the size of two burial plots. This would allow for enough space to pay proper respect to these American heroes. The legislation we are introducing today urges the Army to locate and allocate such space.

I encourage my colleagues to join Senators GREGG, SNOWE, COLLINS and me in honoring these individuals by supporting this measure, and I ask for its speedy consideration by the Senate.

Thank you, Mr. President.

Mr. President, I ask unanimous consent that an editorial from the April 6th edition of Dover, New Hampshire's Foster's Sunday Citizen titled ''Build a Memorial to the Thresher'' be included in the RECORD at the conclusion of my remarks.

BUILD A MEMORIAL TO HONOR THRESHER

As the most powerful military force ever to navigate the seas, the invincibility of today's United States Navy is the sum of myriad successes and tragic failures throughout its history.

The Portsmouth Naval Shipyard has played as big a part—if not bigger—in the Navy's evolution as any other entity. The yard and the residents of our region can be proud of contributions made here over more than two centuries to the evolution of our national defense at sea.

That is why it is important for us to preserve the memory of the USS Thresher and her crew, all of whom perished on April 10, 1963, in the deep ocean.

The preservation of that memory was the reason why people gathered at the shipyard on Saturday. They wanted to remember the boat and her crew—96 sailors, 16 officers and 17 employees of the shipyard.

Besides the New Hampshire and Maine congressional delegations, many in attendance were relatives of those who perished and whose sacrifice resulted in monumental changes to the way submarines after 1963 were constructed for the U.S. Navy.

As a result, it is entirely appropriate for the delegation to call for the construction of a memorial to the USS Thresher and her crew at Arlington National Cemetery. Given the magnitude of the Thresher's contributions to submarine safety during the past 40 years, it is difficult not to support such a project.

As a result of their sacrifice, the SubSafe program was created. Regulations on hull integrity and pressure-related components for submarines were strengthened. The sinking of the Thresher has resulted in the lives of countless submariners being saved because of safety improvement to the vessels they worked on.

Since the Thresher, not one submarine has been lost under similar circumstances.

The USS Thresher was the harbinger of the awesome attack submarines we have today to protect our shores and interests abroad. The debt we owe to the crew and civilians who accepted—on our nation's behalf—the hazards of living and working under water cannot be repaid.

Building a memorial to preserve their memory and contributions is the best we are able to do.

AMENDMENTS SUBMITTED AND PROPOSED

SA 529. Mr. HATCH (for Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DEWINE, Mr. DURBIN, Mr GREGG, Mr. BINGAMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. ROCKFELLER, Mr. SANTORUM, Mr. LEAHY, Mr. KERRY, Mr. LUGAR, Mr. CORZINE, Mr. LEVIN, Mr. TALENT, Ms. LANDRIEU, Mr. SPECTER, and Mr. DASCHLE) proposed an amendment to the bill H.R. 1584, to implement effective measures to stop trade in conflict diamonds, and for other purposes.

SA 530. Mr. MCCONNELL (for Mr. CHAMBLISS) proposed an amendment to the bill S. 783, to expedite the granting of posthumous citizenship to members of the United States Armed Forces.

TEXT OF AMENDMENTS

SA 529. Mr. HATCH (for Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DEWINE, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. LEAHY, Mr. KERRY, Mr. LUGAR, Mr. CORZINE, Mr. LEVIN, Mr. TALENT, Ms. LANDRIEU, Mr. SPECTER, and Mr. DASCHLE)) proposed an amendment to the bill H.R. 1584, to implement effective measures to stop trade in conflict diamonds, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Diamond Trade Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Funds derived from the sale of rough diamonds are being used by rebels and state actors to finance military activities, overthrow legitimate governments, subvert international efforts to promote peace and stability, and commit horrifying atrocities against unarmed civilians. During the past decade, more than 6,500,000 people from Sierra Leone, Angola, and the Democratic Republic of the Congo have been driven from their homes by wars waged in large part for control of diamond mining areas. A million of these are refugees eking out a miserable existence in neighboring countries, and tens of thousands have fled to the United States. Approximately 3,700,000 people have died during these wars.

(2) The countries caught in this fighting are home to nearly 70,000,000 people whose societies have been torn apart not only by fighting but also by terrible human rights violations.

(3) Human rights and humanitarian advocates, the diamond trade as represented by the World Diamond Council, and the United States Government have been working to block the trade in conflict diamonds. Their efforts have helped to build a consensus that action is urgently needed to end the trade in conflict diamonds.

(4) The United Nations Security Council has acted at various times under chapter VII of the Charter of the United Nations to address threats to international peace and security posed by conflicts linked to diamonds. Through these actions, it has prohibited all states from exporting weapons to certain countries affected by such conflicts. It has further required all states to prohibit the direct and indirect import of rough diamonds from Sierra Leone unless the diamonds are controlled under specified certificate of origin regimes and to prohibit absolutely the direct and indirect import of rough diamonds from Liberia.

(5) In response, the United States implemented sanctions restricting the importation of rough diamonds from Sierra Leone to those diamonds accompanied by specified certificates of origin and fully prohibiting the importation of rough diamonds from Liberia. The United States is now taking further action against trade in conflict diamonds.

(6) Without effective action to eliminate trade in conflict diamonds, the trade in legitimate diamonds faces the threat of a consumer backlash that could damage the economies of countries not involved in the trade in conflict diamonds and penalize members of the legitimate trade and the people they employ. To prevent that, South Africa and more than 30 other countries are involved in working, through the ''Kimberley Process'', toward devising a solution to this problem. As the consumer of a majority of the world's supply of diamonds, the United States has an obligation to help sever the link between diamonds and conflict and press for implementation of an effective solution.

(7) Failure to curtail the trade in conflict diamonds or to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds could have a severe negative impact on the legitimate diamond trade in countries such as Botswana, Namibia, South Africa, and Tanzania.

(8) Initiatives of the United States seek to resolve the regional conflicts in sub-Saharan Africa which facilitate the trade in conflict diamonds.

(9) The Interlaken Declaration on the Kimberley Process Certification Scheme for Rough Diamonds of November 5, 2002, states that Participants will ensure that measures taken to implement the Kimberley Process Certification Scheme for Rough Diamonds will be consistent with international trade rules.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Ways and Means and the Committee on International Relations of the House of Representatives, and the Committee on Finance and the Committee on Foreign Relations of the Senate.

(2) CONTROLLED THROUGH THE KIMBERLEY PROCESS CERTIFICATION SCHEME.—An importation or exportation of rough diamonds is ''controlled through the Kimberley Process Certification Scheme'' if it is an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is—

(A) carried out in accordance with the Kimberley Process Certification Scheme, as set forth in regulations promulgated by the President; or

(B) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the Kimberley Process Certification Scheme.

(3) EXPORTING AUTHORITY.—The term ''exporting authority'' means 1 or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate the Kimberley Process Certificate.

(4) IMPORTING AUTHORITY.—The term ''importing authority'' means 1 or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regulating imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

(5) KIMBERLEY PROCESS CERTIFICATE.—The term ''Kimberley Process Certificate'' means a forgery resistant document of a Participant that demonstrates that an importation

or exportation of rough diamonds has been controlled through the Kimberley Process Certification Scheme and contains the minimum elements set forth in Annex I to the Kimberley Process Certification Scheme.

(6) KIMBERLEY PROCESS CERTIFICATION SCHEME.—The term ''Kimberley Process Certification Scheme' means those standards, practices, and procedures of the international certification scheme for rough diamonds presented in the document entitled ''Kimberley Process Certification Scheme'' referred to in the Interlaken Declaration on the Kimberley Process Certification Scheme for Rough Diamonds of November 5, 2002.

(7) PARTICIPANT.—The term ''Participant'' means a state, customs territory, or regional economic integration organization identified by the Secretary of State.

(8) PERSON.—The term ''person'' means an individual or entity.

(9) ROUGH DIAMOND.—The term ''rough diamond'' means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

(10) UNITED STATES.—The term ''United States'', when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(11) UNITED STATES PERSON.—The term ''United States person'' means—

(A) any United States citizen or any alien admitted for permanent residence into the United States;

(B) any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(C) any person in the United States.

SEC. 4. MEASURES FOR THE IMPORTATION AND EXPORTATION OF ROUGH DIAMONDS.

(a) PROHIBITION.—The President shall prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme.

(b) WAIVER.—The President may waive the requirements set forth in subsection (a) with respect to a particular country for periods of not more than 1 year each, if, with respect to each such waiver—

(1) the President determines and reports to the appropriate congressional committees that such country is taking effective steps to implement the Kimberley Process Certification Scheme; or

(2) the President determines that the waiver is in the national interests of the United States, and reports such determination to the appropriate congressional committees, together with the reasons therefor.

SEC. 5. REGULATORY AND OTHER AUTHORITY.

(a) IN GENERAL.—The President is authorized to and shall as necessary issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to carry out this Act.

(b) RECORDKEEPING.—Any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 4(a) applies. The President may require such person to furnish such information under oath, including the production of books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(c) OVERSIGHT.—The President shall require the appropriate Government agency to conduct annual reviews of the standards, practices, and procedures of any entity in the United States that issues Kimberley Process Certificates for the exportation from the United States of rough diamonds to determine whether such standards, practices, and procedures are in accordance with the Kimberley Process Certification Scheme. The President shall transmit to the appropriate congressional committees a report on each annual review under this subsection.

SEC. 6. IMPORTING AND EXPORTING AUTHORITIES.

(a) IN THE UNITED STATES.—For purposes of this Act—

(1) the importing authority shall be the United States Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials; and

(2) the exporting authority shall be the Bureau of the Census.

(b) OF OTHER COUNTRIES.—The President shall publish in the Federal Register a list of all Participants, and all exporting authorities and importing authorities of Participants. The President shall update the list as necessary.

SEC. 7. STATEMENT OF POLICY.

The Congress supports the policy that the President shall take appropriate steps to promote and facilitate the adoption by the international community of the Kimberley Process Certification Scheme implemented under this Act.

SEC. 8. ENFORCEMENT.

(a) IN GENERAL.—In addition to the enforcement provisions set forth in subsection (b)—

(1) a civil penalty of not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this Act; and

(2) whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both.

(b) IMPORT VIOLATIONS.—Those customs laws of the United States, both civil and criminal, including those laws relating to seizure and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to rough diamonds imported in violation of this Act.

(c) AUTHORITY TO ENFORCE.—The United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement are authorized, as appropriate, to enforce the provisions of subsection (a) and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the exporting authority.

SEC. 9. TECHNICAL ASSISTANCE.

The President may direct the appropriate agencies of the United States Government to make available technical assistance to countries seeking to implement the Kimberley Process Certification Scheme.

SEC. 10. SENSE OF CONGRESS.

(a) ONGOING PROCESS.—It is the sense of the Congress that the Kimberley Process Certification Scheme, officially launched on January 1, 2003, is an ongoing process. The President should work with Participants to strengthen the Kimberley Process Certification Scheme through the adoption of measures for the sharing of statistics on the production of and trade in rough diamonds, and for monitoring the effectiveness of the Kimberley Process Certification Scheme in stemming trade in diamonds the importation or exportation of which is not controlled through the Kimberley Process Certification Scheme.

(b) STATISTICS AND REPORTING.—It is the sense of the Congress that under Annex III to the Kimberley Process Certification Scheme, Participants recognized that reliable and comparable data on the international trade in rough diamonds are an essential tool for the effective implementation of the Kimberley Process Certification Scheme. Therefore, the executive branch should continue to—

(1) keep and publish statistics on imports and exports of rough diamonds under subheadings 7102.10.00, 7102.21, and 7102.31.00 of the Harmonized Tariff Schedule of the United States;

(2) make these statistics available for analysis by interested parties and by Participants; and

(3) take a leadership role in negotiating a standardized methodology among Participants for reporting statistics on imports and exports of rough diamonds.

SEC. 11. KIMBERLEY PROCESS IMPLEMENTATION COORDINATING COMMITTEE.

The President shall establish a Kimberley Process Implementation Coordinating Committee to coordinate the implementation of this Act. The Committee shall be composed of the following individuals or their designees:

(1) The Secretary of the Treasury and the Secretary of State, who shall be co-chairpersons.

(2) The Secretary of Commerce.

(3) The United States Trade Representative.

(4) The Secretary of Homeland Security.

(5) A representative of any other agency the President deems appropriate.

SEC. 12. REPORTS.

(a) ANNUAL REPORTS.—Not later than 1 year after the date of the enactment of this Act and every 12 months thereafter for such period as this Act is in effect, the President shall transmit to the Congress a report—

(1) describing actions taken by countries that have exported rough diamonds to the United States during the preceding 12-month period to control the exportation of the diamonds through the Kimberley Process Certification Scheme;

(2) describing whether there is statistical information or other evidence that would indicate efforts to circumvent the Kimberley Process Certification Scheme, including cutting rough diamonds for the purpose of circumventing the Kimberley Process Certification Scheme;

(3) identifying each country that, during the preceding 12-month period, exported rough diamonds to the United States and was exporting rough diamonds not controlled through the Kimberley Process Certification Scheme, if the failure to do so has significantly increased the likelihood that those diamonds not so controlled are being imported into the United States; and

(4) identifying any problems or obstacles encountered in the implementation of this Act or the Kimberly Process Certification Scheme.

(b) SEMIANNUAL REPORTS.—For each country identified in subsection (a)(3), the President, during such period as this Act is in effect, shall, every 6 months after the initial report in which the country was identified, transmit to the Congress a report that explains what actions have been taken by the United States or such country since the previous report to ensure that diamonds the exportation of which was not controlled

through the Kimberley Process Certification Scheme are not being imported from that country into the United States. The requirement to issue a semiannual report with respect to a country under this subsection shall remain in effect until such time as the country is controlling the importation and exportation of rough diamonds through the Kimberley Process Certification Scheme.

SEC. 13. GAO REPORT.

Not later than 24 months after the effective date of this Act, the Comptroller General of the United States shall transmit a report to the Congress on the effectiveness of the provisions of this Act in preventing the importation or exportation of rough diamonds that is prohibited under section 4. The Comptroller General shall include in the report any recommendations on any modifications to this Act that may be necessary.

SEC. 14. DELEGATION OF AUTHORITIES.

The President may delegate the duties and authorities under this Act to such officers, officials, departments, or agencies of the United States Government as the President deems appropriate.

SEC. 15. EFFECTIVE DATE.

This Act shall take effect on the date on which the President certifies to the Congress that—

(1) an applicable waiver that has been granted by the World Trade Organization is in effect; or

(2) an applicable decision in a resolution adopted by the United Nations Security Council pursuant to Chapter VII of the Charter of the United Nations is in effect.

This Act shall thereafter remain in effect during those periods in which, as certified by the President to the Congress, an applicable waiver or decision referred to in paragraph (1) or (2) is in effect.

SA 530. Mr. MCCONNELL (for Mr. CHAMBLISS) proposed an amendment to the bill S. 783, to expedite the granting of posthumous citizenship to members of the United States Armed Forces; as follows:

On page 2, strike lines 1 through 7, and insert the following:

''(c) REQUESTS FOR POSTHUMOUS CITIZENSHIP.—

''(1) IN GENERAL.—A request for the granting of posthumous citizenship to a person described in subsection (b) may be filed on behalf of that person—

''(A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary's designee with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

''(B) by the next-of-kin.

''(2) APPROVAL.—The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if—

''(A) the request is filed not later than 2 years after—

''(i) the date of enactment of this section; or

''(ii) the date of the person's death;

whichever date is later;

''(B) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b); and

''(C) the Director finds that the person satisfied the requirement of subsection (b)(3).''; and

On page 2, after line 22, insert the following:

(c) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect as if enacted on September 11, 2001.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, April 10, 2003, at 10:15 a.m., in open and possibly closed session, to receive testimony on the military implications of NATO enlargement and on post-conflict Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on April 10, 2003, at 10 a.m., to conduct a hearing on ''Recent Developments in Hedge Funds.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday April 10, 2003, at 10 a.m., on FAA Reauthorization.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Thursday, April 10 at 10 a.m. to consider comprehensive energy legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet on during the session of the Senate, on Thursday April 10, 2003, at 9:30 a.m. to hold a Business Meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 10, 2003 to hold a Business Meeting (to pass out nominations) after the first rollcall vote.

The PRESIDING OFFICER. Without objection. it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, April 10, 2003 at 9:30 a.m. to consider the nomination of Peter Eide to be General Counsel for the Federal Labor Relations Authority.

The PRESIDING OFFICER. Without objection. it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, April 10, 2003 at 11 a.m. for a hearing entitled ''Prosecuting Iraqi War Crimes: A Consideration of the Different Forum Options.''

The PRESIDING OFFICER. Without objection. it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on Putting the Teaching of American History and Civics Back in the Classroom during the session of the Senate on Thursday, April 10, 2003 at 9 a.m. in SD–430.

The PRESIDING OFFICER. Without objection. it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, April 10, 2003, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting to mark up pending committee legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, April 10, 2003, for a markup on the nominations of Bruce E. Kasold to be Judge, U.S. Court of Appeals for Veterans Claims, and John W. Nicholson to be Under Secretary for Memorial Affairs, Department of Veterans Affairs. The meeting will take place in the Senate Reception Room in the Capitol after the first rollcall vote after noon on April 10, 2003.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT ECONOMIC COMMITTEE

Mr. FRIST. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to conduct a hearing in Room 562 of the Dirksen Senate Office Building, Thursday, April 10, 2003, from 10:30 a.m. to 1 p.m.

Thank you.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND WATER

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Fisheries, Wildlife, and Water be authorized to meet on Thursday, April 10 at 9:30 a.m. to examine the designation of critical habitat under the Endangered Species Act.

The hearing will be conducted in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space be authorized to meet on April 10, 2003, at 2:30 p.m. on brain mapping.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Kentucky.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 127, and all the nominations on the Secretary's desk.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed en bloc, as follows:

DEPARTMENT OF STATE

Lino Gutierrez, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Roland W. Bullen, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Co-operative Republic of Guyana.

Eric M. Javits, of New York, for the rank of Ambassador during his tenure of service as United States Representative of the Organization for the Prohibition of Chemical Weapons.

John W. Snow, of Virginia, to be United States Governor of the International Monetary Fund for a term of five years; United States Governor of the International Bank for Reconstruction and Development for a term of five years; United States Governor of the Inter-American Development Bank for a term of five years; United States Governor of the African Development Bank for a term of five years; United States Governor of the Asian Development Bank; United States Governor of the African Development Fund; United States Governor of the European Bank for Reconstruction and Development.

MISSISSIPPI RIVER COMMISSION

Ricky Dale James, of Missouri, to be a Member of the Mississippi River Commission for a term of nine years.

Rear Adm. Nicholas Augustus Prahl, National Oceanic and Atmospheric Administration, to be a Member of the Mississippi River Commission, under the provisions of Section 2 of an Act of Congress, approved 28 June 1879 (21 Stat. 37) (22 USC 642).

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Herbert Guenther, of Arizona, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term of two years.

Bradley Udall, of Colorado, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2006.

Malcolm B. Bowekaty, of New Mexico, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2006.

Richard Narcia, of Arizona, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring August 25, 2006.

Robert Boldrey, of Michigan, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring May 26, 2007.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

FOREIGN SERVICE

PN355 Foreign Service nominations (187) beginning Louise Brandt Bigott, and ending Kathleen Hatch Allegrone, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of February 25, 2003.

NOMINATIONS DISCHARGED

Mr. MCCONNELL. In executive session, I ask unanimous consent that the HELP Committee be discharged from further consideration of the following nominations: Delores Etter, Daniel Hastings, Jo Anne Vasquez, Barry Barish, Douglas Randall, Karen Johnson.

I further ask unanimous consent that the nomination of Karen Johnson be placed on the calendar. Further, I ask unanimous consent that the Senate proceed immediately to the remaining nominations, the nominations be confirmed en bloc, the motions to reconsider be laid on the table en bloc, further that the President then be notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

NATIONAL SCIENCE FOUNDATION

Barry C. Barish, of California, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Delores N, Etter, of Maryland, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Daniel E. Hastings, of Massachusetts, to be a Member of the National Science Board, National Science Foundation, for term expiring May 10, 2008.

Douglas D. Randall, of Missouri, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Jo Anne Vasquez, of Arizona, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

UNANIMOUS CONSENT AGREEMENT—S. 196

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader in consultation with the minority leader, the Senate proceed to the consideration of Calendar No. 60, S. 196, the digital technology bill; further that there be one hour of debate equally divided between Senator ALLEN and the ranking member or their designees; in addition, that of the time under the majority control, Senator MCCAIN be allotted 5 minutes; that the only amendments in order be the committee-reported amendments and one technical amendment offered by Senator ALLEN; that at the expiration or yielding back of time, the amendments be adopted, the bill, as amended, be read a third time, and the Senate proceed to a vote on passage of the bill, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

LIFESPAN RESPITE CARE ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 69, S. 538.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 538) to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The bill (S. 538) was read the third time and passed, as follows:

S. 538

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 ''Lifespan Respite Care Act of 2003''.

SEC. 2. LIFESPAN RESPITE CARE.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

''TITLE XXIX—LIFESPAN RESPITE CARE

''SEC. 2901. FINDINGS AND PURPOSES.

''(a) FINDINGS.—Congress finds that—

''(1) an estimated 26,000,000 individuals in the United States care each year for 1 or more adult family members or friends who are chronically ill, disabled, or terminally ill;

''(2) an estimated 18,000,000 children in the United States have chronic physical, developmental, behavioral, or emotional conditions that demand caregiver monitoring,

management, supervision, or treatment beyond that required of children generally;

''(3) nearly 4,000,000 individuals in the United States of all ages who have mental retardation or another developmental disability live with their families;

''(4) almost 25 percent of the Nation's elders experience multiple chronic disabling conditions that make it necessary to rely on others for help in meeting their daily needs;

''(5) every year, approximately 600,000 Americans die at home and many of these individuals rely on extensive family caregiving before their death;

''(6) of all individuals in the United States needing assistance in daily living, 42 percent are under age 65;

''(7) there are insufficient resources to replace family caregivers with paid workers;

''(8) if services provided by family caregivers had to be replaced with paid services, it would cost approximately $200,000,000,000 annually;

''(9) the family caregiver role is personally rewarding but can result in substantial emotional, physical, and financial hardship;

''(10) approximately 75 percent of family caregivers are women;

''(11) family caregivers often do not know where to find information about available respite care or how to access it;

''(12) available respite care programs are insufficient to meet the need and are directed at primarily lower income populations and family caregivers of the elderly, leaving large numbers of family caregivers without adequate support; and

''(13) the limited number of available respite care programs find it difficult to recruit appropriately trained respite workers.

''(b) PURPOSES.—The purposes of this title are—

''(1) to encourage States to establish State and local lifespan respite care programs;

''(2) to improve and coordinate the dissemination of respite care information and resources to family caregivers;

''(3) to provide, supplement, or improve respite care services to family caregivers;

''(4) to promote innovative, flexible, and comprehensive approaches to—

''(A) the delivery of respite care;

''(B) respite care worker and volunteer recruitment and training programs; and

''(C) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services;

''(5) to support evaluative research to identify effective respite care services that alleviate, reduce, or minimize any negative consequences of caregiving; and

''(6) to promote the dissemination of results, findings, and information from programs and research projects relating to respite care delivery, family caregiver strain, respite care worker and volunteer recruitment and training, and training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services.

''SEC. 2902. DEFINITIONS.

''In this title:

''(1) ELIGIBLE RECIPIENT.—The term 'eligible recipient' means—

''(A) a State agency;

''(B) any other public entity that is capable of operating on a statewide basis;

''(C) a private, nonprofit organization that is capable of operating on a statewide basis;

''(D) a political subdivision of a State that has a population of not less than 3,000,000 individuals; or

''(E) any recognized State respite coordinating agency that has—

''(i) a demonstrated ability to work with other State and community-based agencies;

''(ii) an understanding of respite care and family caregiver issues; and

''(iii) the capacity to ensure meaningful involvement of family members, family caregivers, and care recipients.

''(2) ADULT WITH A SPECIAL NEED.—The term 'adult with a special need' means a person 18 years of age or older who requires care or supervision to—

''(A) meet the person's basic needs; or

''(B) prevent physical self-injury or injury to others.

''(3) CHILD WITH A SPECIAL NEED.—The term 'child with a special need' means a person less than 18 years of age who requires care or supervision beyond that required of children generally to—

''(A) meet the child's basic needs; or

''(B) prevent physical self-injury or injury to others.

''(4) FAMILY CAREGIVER.—The term 'family caregiver' means an unpaid family member, a foster parent, or another unpaid adult, who provides in-home monitoring, management, supervision, or treatment of a child or adult with a special need.

''(5) RESPITE CARE.—The term 'respite care' means planned or emergency care provided to a child or adult with a special need in order to provide temporary relief to the family caregiver of that child or adult.

''(6) LIFESPAN RESPITE CARE.—The term 'lifespan respite care' means a coordinated system of accessible, community-based respite care services for family caregivers of children or adults with special needs.

''SEC. 2903. LIFESPAN RESPITE CARE GRANTS AND COOPERATIVE AGREEMENTS.

''(a) PURPOSES.—The purposes of this section are—

''(1) to expand and enhance respite care services to family caregivers;

''(2) to improve the statewide dissemination and coordination of respite care; and

''(3) to provide, supplement, or improve access and quality of respite care services to family caregivers, thereby reducing family caregiver strain.

''(b) AUTHORIZATION.—Subject to subsection (f), the Secretary is authorized to award grants or cooperative agreements to eligible recipients who submit an application pursuant to subsection (d).

''(c) FEDERAL LIFESPAN APPROACH.—In carrying out this section, the Secretary shall work in cooperation with the National Family Caregiver Support Program Officer of the Administration on Aging, and respite care program officers in the Administration for Children and Families, the Administration on Developmental Disabilities, the Maternal and Child Health Bureau of the Health Resources and Services Administration, and the Substance Abuse and Mental Health Services Administration, to ensure coordination of respite care services for family caregivers of children and adults with special needs.

''(d) APPLICATION.—

''(1) SUBMISSION.—Each eligible recipient desiring to receive a grant or cooperative agreement under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require.

''(2) CONTENTS.—Each application submitted under this section shall include—

''(A) a description of the applicant's—

''(i) understanding of respite care and family caregiver issues;

''(ii) capacity to ensure meaningful involvement of family members, family caregivers, and care recipients; and

''(iii) collaboration with other State and community-based public, nonprofit, or private agencies;

''(B) with respect to the population of family caregivers to whom respite care information or services will be provided or for whom respite care workers and volunteers will be recruited and trained, a description of—

''(i) the population of family caregivers;

''(ii) the extent and nature of the respite care needs of that population;

''(iii) existing respite care services for that population, including numbers of family caregivers being served and extent of unmet need;

''(iv) existing methods or systems to coordinate respite care information and services to the population at the State and local level and extent of unmet need;

''(v) how respite care information dissemination and coordination, respite care services, respite care worker and volunteer recruitment and training programs, or training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services will be provided using grant or cooperative agreement funds;

''(vi) a plan for collaboration and coordination of the proposed respite care activities with other related services or programs offered by public or private, nonprofit entities, including area agencies on aging;

''(vii) how the population, including family caregivers, care recipients, and relevant public or private agencies, will participate in the planning and implementation of the proposed respite care activities;

''(viii) how the proposed respite care activities will make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, other forms of reimbursements, personnel, and facilities;

''(ix) respite care services available to family caregivers in the applicant's State or locality, including unmet needs and how the applicant's plan for use of funds will improve the coordination and distribution of respite care services for family caregivers of children and adults with special needs;

''(x) the criteria used to identify family caregivers eligible for respite care services;

''(xi) how the quality and safety of any respite care services provided will be monitored, including methods to ensure that respite care workers and volunteers are appropriately screened and possess the necessary skills to care for the needs of the care recipient in the absence of the family caregiver; and

''(xii) the results expected from proposed respite care activities and the procedures to be used for evaluating those results; and

''(C) assurances that, where appropriate, the applicant shall have a system for maintaining the confidentiality of care recipient and family caregiver records.

''(e) REVIEW OF APPLICATIONS.—

''(1) ESTABLISHMENT OF REVIEW PANEL.—The Secretary shall establish a panel to review applications submitted under this section.

''(2) MEETINGS.—The panel shall meet as often as may be necessary to facilitate the expeditious review of applications.

''(3) FUNCTION OF PANEL.—The panel shall—

''(A) review and evaluate each application submitted under this section; and

''(B) make recommendations to the Secretary concerning whether the application should be approved.

''(f) AWARDING OF GRANTS OR COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—The Secretary shall award grants or cooperative agreements from among the applications approved by the panel under subsection (e)(3).

''(2) PRIORITY.—When awarding grants or cooperative agreements under this subsection, the Secretary shall give priority to applicants that show the greatest likelihood

of implementing or enhancing lifespan respite care statewide.

''(g) USE OF GRANT OR COOPERATIVE AGREEMENT FUNDS.—

''(1) IN GENERAL.—

''(A) MANDATORY USES OF FUNDS.—Each eligible recipient that is awarded a grant or cooperative agreement under this section shall use the funds for, unless such a program is in existence—

''(i) the development of lifespan respite care at the State and local levels; and

''(ii) an evaluation of the effectiveness of such care.

''(B) DISCRETIONARY USES OF FUNDS.—Each eligible recipient that is awarded a grant or cooperative agreement under this section may use the funds for—

''(i) respite care services for family caregivers of children and adults with special needs;

''(ii) respite care worker and volunteer training programs; or

''(iii) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services.

''(C) EVALUATION.—If an eligible recipient uses funds awarded under this section for an activity described in subparagraph (B), the eligible recipient shall use funds for an evaluation of the effectiveness of the activity.

''(2) SUBCONTRACTS.—Each eligible recipient that is awarded a grant or cooperative agreement under this section may use the funds to subcontract with a public or nonprofit agency to carry out the activities described in paragraph (1).

''(h) TERM OF GRANTS OR COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—The Secretary shall award grants or cooperative agreements under this section for terms that do not exceed 5 years.

''(2) RENEWAL.—The Secretary may renew a grant or cooperative agreement under this section at the end of the term of the grant or cooperative agreement determined under paragraph (1).

''(i) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this section shall be used to supplement and not supplant other Federal, State, and local funds available for respite care services.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $90,500,000 for fiscal year 2004; and

''(2) such sums as are necessary for fiscal years 2005 through 2008.

''SEC. 2904. NATIONAL LIFESPAN RESPITE RESOURCE CENTER.

''(a) ESTABLISHMENT.—From funds appropriated under subsection (c), the Secretary shall award a grant or cooperative agreement to a public or private nonprofit entity to establish a National Resource Center on Lifespan Respite Care (referred to in this section as the 'center').

''(b) PURPOSES OF THE CENTER.—The center shall—

''(1) maintain a national database on lifespan respite care;

''(2) provide training and technical assistance to State, community, and nonprofit respite care programs; and

''(3) provide information, referral, and educational programs to the public on lifespan respite care.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for each of fiscal years 2004 through 2008.''.

GRANTING POSTHUMOUS CITIZENSHIP TO MEMBERS OF THE U.S. ARMED FORCES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 783 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 783) to expedite the granting of posthumous citizenship to members of the United States Armed Forces.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate agree to the Chambliss amendment that is at the desk, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The amendment (No. 530) was agreed to, as follows:

(Purpose: To permit the Secretary of Defense or the next-of-kin to file for posthumous citizenship to noncitizens who died while in active duty service in the Armed Forces)

On page 2, strike lines 1 through 7, and insert the following:

''(c) REQUESTS FOR POSTHUMOUS CITIZENSHIP.—

''(1) IN GENERAL.—A request for the granting of posthumous citizenship to a person described in subsection (b) may be filed on behalf of that person—

''(A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary's designee with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

''(B) by the next-of-kin.

''(2) APPROVAL.—The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if—

''(A) the request is filed not later than 2 years after—

''(i) the date of enactment of this section; or

''(ii) the date of the person's death;

whichever date is later;

''(B) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b); and

''(C) the Director finds that the person satisfied the requirement of subsection (b)(3).''; and

On page 2, after line 22, insert the following:

(c) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect as if enacted on September 11, 2001.

The bill (S. 783), as amended, was read the third time and passed, as follows:

S. 783

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

SECTION 1. GRANTING OF POSTHUMOUS CITIZENSHIP TO MEMBERS OF THE ARMED FORCES.

(a) REQUESTS AND DOCUMENTATION FOR POSTHUMOUS CITIZENSHIP.—Section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) REQUESTS FOR POSTHUMOUS CITIZENSHIP.—

''(1) IN GENERAL.—A request for the granting of posthumous citizenship to a person described in subsection (b) may be filed on behalf of that person—

''(A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary's designee with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

''(B) by the next-of-kin.

''(2) APPROVAL.—The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if—

''(A) the request is filed not later than 2 years after—

''(i) the date of enactment of this section; or

''(ii) the date of the person's death;

whichever date is later;

''(B) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b); and

''(C) the Director finds that the person satisfied the requirement of subsection (b)(3).''; and

(2) by striking subsection (d) and inserting the following:

''(d) DOCUMENTATION OF POSTHUMOUS CITIZENSHIP.—If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), the Director shall send to the next-of-kin of the person who is granted citizenship, a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person's death.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 329A(a) of the Immigration and Nationality Act (8 U.S.C. 1440–1(a)) is amended by striking ''the Attorney General'' each place that term appears and inserting ''the Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect as if enacted on September 11, 2001.

AMENDING THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 870, introduced earlier today by Senators HARKIN and COCHRAN.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 870) to amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program.

There being no objection, the Senate proceeded to consider the bill.

Mr. HARKIN. Mr. President, today I join my colleague from Mississippi, the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, in support of this bill that would keep fresh fruits and vegetables going to over 100 schools throughout the Nation.

We hear a great deal about the importance of teaching our children good nutrition as well as about the epidemic of obesity and poor eating habits among American children. But for all the talk and concern, we do far too little about it.

Last year, I worked with my colleagues to take concrete steps to address these issues. Concerned about the fact that many children today have only minimal experiences with fresh fruits and vegetables, we created a pilot project that provides fresh fruits and vegetables to schools in Iowa, Indiana, Michigan, Ohio, and to schools on an Indian reservation at Zuni, NM.

Despite the fact that we know there are many positive benefits associated with the consumption of fresh fruits and vegetables, we still fail to do nearly enough to encourage their consumption through our Federal nutrition programs. We must do more to encourage their purchase in our schools and to promote their consumption on an individual level.

The reports that we are getting back from schools about this program are absolutely tremendous. Just last week my staff had a conference call with school administrators, parents, and students at Zuni, NM. They are almost ecstatic in their praise of the program. The children were excited to be able to try foods that they had never had a chance to eat before. Parents report that their kids are coming home to them and asking them to buy the same fruits and vegetables for the home that they eat at school. And school administrators report healthier diets, fewer discipline problems, and buy-in from the entire school community. Even the janitors love the program.

Dieticians and school officials in Iowa tell me that, because of the fruit and vegetable pilot, their work is more fulfilling now than ever before.

This is a program that we need to expand so that all schools are able to participate. As the Senate moves forward with the reauthorization of our child nutrition programs this year, I'll be looking at ways that we can do this and at ways that we can encourage healthier lifestyles for all of our children.

In the meantime, the bill that I am introducing today allows us to extend the current fruit and vegetable pilot for an additional year. Because of the short timeframe that we had to actually set up the fruit and vegetable pilot, many of the schools were not able to begin their participation in the program as quickly as they had hoped. As a result, many schools will have funds remaining at the end of the school year. They have told me, as has the Department of Agriculture, that they would like to use their carryover funds for an additional year. This bill simply extends the authorization of the Department of Agriculture to continue the program for another year.

This does not provide any new money. It simply allows the schools to carryover current funds into the 2003 school year. The Congressional Budget Office has indicated that there is no cost associated with this.

As evidenced by the concurrence of Senator COCHRAN, this is a non-partisan, non-controversial bill, and I urge my colleagues to work with me to see that this program is extended before its current authorization runs out on June 30 of this year.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The bill (S. 870) was read the third time and passed, as follows:

S. 870

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

SECTION 1. FRUIT AND VEGETABLE PILOT PROGRAM.

Section 18(g)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(g)(4)) is amended by inserting before the period at the end the following: '', to remain available until the close of the school year beginning July 2003''.

DESIGNATING THE JIM RICHARDSON POST OFFICE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 1505 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1505) to designate the facility of the United States Postal Service located at 2127 Beatties Ford Road in Charlotte, North Carolina, as the ''Jim Richardson Post Office''.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1505) was read the third time and passed.

REMOVAL OF INJUNCTION OF TREATIES—TREATY DOCUMENT NO. 108–4

Mr. MCCONNELL. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on April 10, 2003, by the President of the United States:

Protocols of the North Atlantic Treaty of 1949, on Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, Treaty Document No. 108–4.

I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith Protocols to the North Atlantic Treaty of 1949 on the accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. These protocols were opened for signature at Brussels on March 26, 2003, and signed that day on behalf of the United States and the other parties to the North Atlantic Treaty. I request the advice and consent of the Senate to the ratification of these documents. I also transmit for the information of the Senate a report submitted to me by the Secretary of State regarding this matter.

The end of communism and the consolidation freedom and democracy in Central and Eastern Europe have been among the great developments of human history. NATO played a vital role in defending freedom and promoting this peaceful change for over 50 years. I am pleased that, with the advice and consent of the Senate, these new democracies can soon join us as members of this great Alliance.

As the threats to the Alliance have changed, NATO itself has adapted to face them. At the Prague Summit in November 2002, I joined the leaders of NATO not only in inviting these nations to join us as members, but also in calling for a transformation of NATO's military capabilities and structures to meet the threats of the 21st century. NATO is proceeding with that agenda. Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia are already making real contributions to the common security of the NATO Allies, including the United States, and I ask the Senate to join me in advancing the cause of freedom and strengthening NATO by providing its prompt advice and consent to these Protocols of Accession. My Administration stands ready to assist you as best we can in your deliberations.

GEORGE BUSH.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President of the Senate, pursuant to Public Law 85–874, as amended, appoints the Senator from Texas, Mrs. HUTCHISON, to the Board of Trustees of the John F. Kennedy Center for the Performing Arts, vice the Senator from Nevada, Mr. REID.