S. CON. RES. 7

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. Con. Res. 7, supra.

S. CON. RES. 7

At the request of Mr. CAMPBELL, the names of the Senator from Iowa (Mr. GRASSLEY) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. Con. Res. 7, supra.

S. RES. 133

At the request of Mr. DURBIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Res. 133, a resolution condemning bigotry and violence against Arab Americans, Muslim Americans, South-Asian Americans, and Sikh Americans.

AMENDMENT NO. 691

At the request of Mrs. CLINTON, her name was added as a cosponsor of amendment No. 691 proposed to S. 1050, an original bill to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 785

At the request of Mr. WARNER, his name and the name of the Senator from Michigan (Mr. LEVIN) were added as cosponsors of amendment No. 785 proposed to S. 1050, an original bill to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 785

At the request of Mr. LIEBERMAN, his name was added as a cosponsor of amendment No. 785 proposed to S. 1050, supra.

AMENDMENT NO. 785

At the request of Mr. KERRY, his name was added as a cosponsor of amendment No. 785 proposed to S. 1050, supra.

AMENDMENT NO. 785

At the request of Mr. DODD, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Rhode Island (Mr. REED), the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mr. SCHUMER), the Senator from Vermont (Mr. JEFFORDS), the Senator from New York (Mrs. CLINTON), the Senator from Maine (Ms. SNOWE), the Senator from Maryland (Ms. MIKULSKI), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Montana (Mr. BAUCUS), the Senator from California (Mrs. FEINSTEIN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 785 proposed to S. 1050, supra.

AMENDMENT NO. 785

At the request of Mr. SMITH, his name was added as a cosponsor of amendment No. 785 proposed to S. 1050, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KOHL, Mr. DURBIN, Mr. FEINGOLD, Mrs. CLINTON, and Mr. SCHUMER):

S. 1103. A bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services and to enforce the Hazard Analysis and Critical Control Point (HACCP) System requirements, sanitation requirements, and the performance standards; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. HARKIN. Mr. President, today I am introducing the Meat and Poultry Pathogen Reduction Act of 2003. This legislation, commonly known as Kevin's Law, is dedicated to the memory of 2-year-old Kevin Kowalcyk, who died in 2001 after eating a hamburger contaminated with E.coli H7:0157 bacteria. Passage of this bill is vital because on December 6, 2001, the 5th Circuit Court of Appeals upheld and expanded an earlier District Court decision that removes the U.S. Department of Agriculture's, USDA, authority to enforce its Pathogen Performance Standard for Salmonella. The 5th Circuit's decision in Supreme Beef v. USDA, Supreme, seriously undermines the sweeping food safety changes adopted by USDA in its 1996 Hazard Analysis Critical Control Point and Pathogen Reduction, HACCP, rule.

More recently, there was another court case that calls into question USDA's authority to enforce its microbiological performance standards. A company called Nebraska Beef sued USDA after the Department tried to shut down the plant for numerous alleged food safety violations. The judge in the case granted a temporary restraining order, preventing USDA to take enforcement action.

According the 5th Circuit's opinion in Supreme and the Nebraska Beef decision, today, there is nothing USDA could do to shut down a meat grinding plant that insists on using low-quality, potentially contaminated trimmings. These decisions seriously undermine the new meat and poultry inspection system.

The Pathogen Reduction Rule recognized that bacterial and viral pathogens were the foremost food safety threat in America, responsible for 5,000 deaths, 325,000 hospitalizations and 76 million illnesses each year. To address the threat of foodborne illness, USDA developed a modern inspection system based on two fundamental principles.

The first was that industry has the primary responsibility to determine how to produce the safest products possible. Industry had to examine their plants and determine how to control contamination at every step of the food production process, from the moment a product arrives at their door until the moment it leaves their plant.

The second, even more crucial principle was that plants nationwide must reduce levels of dangerous pathogens in meat and poultry products. To ensure the new inspection system accomplished this, USDA developed Pathogen Performance Standards. These standards provide targets for reducing pathogens and require all USDA-inspected facilities to meet them. Facilities failing to meet a standard are shut down until they create a corrective action plan to meet the standard.

So far, USDA has only issued one Pathogen Performance Standard, for Salmonella. The vast majority of plants in the U.S. have been able to meet the new standard, so it is clearly workable. In addition, USDA reports that Salmonella levels for meat and poultry products have fallen substantially. Therefore the Salmonella standard has been successful. The 5th Circuit Court's and the Nebraska Beef decisions threaten to destroy this success and set our food safety system back years.

The other major problem is we have an industry dead set on striking down USDA's authority to enforce meat and poultry pathogen standards. Ever since the original Supreme decision, I have spent untold hours trying to find a compromise that will allow us to ensure we have enforceable, science-based standards for pathogens in meat and poultry products. I have introduced bills to address this issue and I have even worked with industry leaders to reach a reasonable compromise.

However, despite repeated attempts to address industry concerns, industry has continually backtracked and moved the finish line. Many times, I have made changes in my legislation to address their ''pressing'' concern of the moment only to have them come back and say we hadn't gone far enough. We cannot let a few bullies in the meat and poultry industry place our children, our families at a increased risk of getting ill or dying, because some of the industry want to backtrack on food safety.

In addition, the recent announcement that a cow in Alberta, Canada tested positive for bovine spongiform encephalopathy, BSE, otherwise known as ''mad cow disease'', provoked the U.S. government to immediately close the U.S.-Canadian border for the trade at beer and beef products. I applaud the current Administration for taking this action to ensure the safety of our Nation's food supply until more information is made available about the true extent of the problem.

And without downplaying the seriousness of that horrible disease, I think its necessary to look at the impact of BSE in light of other food borne illnesses. Researchers believe that BSE is linked to variable Creutzfeldt-Jakob,

vCJD, disease. Since its onset in Britain in 1995, 129 people have died worldwide from vCJD. Foodborne pathogens, on the other hand, have cause 5000 deaths, 125,000 hospitalizations, and 76 million illnesses each year. The numbers speak for themselves.

The swift and comprehensive response provoked by a single diseased cow in a neighboring country stands in stark contrast to the way our government currently responds to outbreaks of foodbornes illness in our country today. USDA has the ability to shut down the trade from the biggest importer of beef into out country on suspicions of possible food safety problems, but cannot even temporarily shut down one plant that USDA knows has problems.

I plan to seek every opportunity to get this language enacted. I think it is essential, both to ensuring the modernization of our food safety system, and ensuring consumers that we are making progress in reducing dangerous pathogens.

I hope that both parties, and both houses of Congress will be able to act to pass this legislation without delay. The public's confidence in our meat and poultry inspection system is at stake.

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. 1103

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 ''Meat and Poultry Pathogen Reduction and Enforcement Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the primary purpose of the Federal meat and poultry inspection program is to protect public health;

(2) the Centers for Disease Control and Prevention report that human pathogens found in raw and cooked meat, meat products, poultry, and poultry products are a significant source of foodborne illness;

(3) to reduce the public health burden of foodborne illness, the Federal meat and poultry inspection system should focus on reducing the risk of foodborne illness associated with the presence of foodborne pathogens through—

(A) establishment and enforcement of performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services; and

(B) enforcement of the Hazard Analysis and Critical Control Point (HACCP) System requirements and sanitation requirements;

(4) good public health practice requires controlling pathogens as close as practicable to the initial source of contamination to reduce pathogens and prevent foodborne illness;

(5) there is a need for strong safeguards at slaughter establishments during the slaughter and processing of meat and poultry products because those establishments are where pathogen contamination often originates;

(6) while proper handling and cooking of meat and poultry products can virtually eliminate the risk of foodborne illness from the consumption of meat and poultry, the presence of pathogens in raw meat and poultry products leads to cross-contamination of other foods and surrounding surfaces;

(7) to reduce the risk of foodborne illness and protect public health, regulatory authorities and all parties involved in the production and handling of meat, meat products, poultry, or poultry products should make a concerted effort to reduce, to the maximum extent practicable, contamination by pathogens using the best available scientific information and appropriate technology;

(8) the distribution of meat, meat products, poultry, or poultry products that contain human pathogens—

(A) impairs the effective regulation of wholesome meat, meat products, poultry, or poultry products in interstate and foreign commerce; and

(B) destroys markets for wholesome products;

(9) all articles and other animals that are subject to this Act and the amendments made by this Act are either in or substantially affect interstate or foreign commerce; and

(10) regulation by the Secretary of Agriculture and cooperation by the States are necessary to prevent or eliminate burdens on interstate or foreign commerce and to protect the health and welfare of consumers.

SEC. 3. PATHOGEN PERFORMANCE STANDARDS.

(a) MEAT AND MEAT PRODUCTS.—The Federal Meat Inspection Act (21 U.S.C. 601 et seq.) is amended by inserting after section 8 (21 U.S.C. 608) the following:

''SEC. 8A. PATHOGEN PERFORMANCE STANDARDS.

''(a) IN GENERAL.—In order to protect the public health and promote food safety, the Secretary shall prescribe performance standards for the reduction of pathogens in raw meat and meat products processed by each establishment receiving inspection services under this Act.

''(b) LIST OF PATHOGENS.—

''(1) IN GENERAL.—In consultation with the Secretary of Health and Human Services, and taking into account data available from the Centers for Disease Control and Prevention, the Secretary shall identify the pathogens that make a significant contribution to the total burden of foodborne disease associated with meat and meat products.

''(2) PUBLICATION; UPDATES.—The Secretary shall—

''(A) publish a list of the pathogens described in paragraph (1) not later than 60 days after the date of enactment of this section; and

''(B) update and publish the list annually thereafter.

''(c) PATHOGEN SURVEYS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall initiate comprehensive, statistically representative surveys to determine the current levels and incidence of contamination of raw meat and meat products with the pathogens listed under subsection (b), including the variation in levels and incidence of contamination among establishments.

''(2) PUBLICATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall compile, and publish in the Federal Register, the results of the surveys.

''(3) UPDATES.—At least once every 3 years after the preceding surveys are conducted, the Secretary shall—

''(A) conduct surveys described in paragraph (1); and

''(B) compile and publish the results of the surveys in accordance with paragraph (2).

''(d) PATHOGEN REDUCTION PERFORMANCE STANDARDS.—

''(1) IN GENERAL.—The pathogen reduction performance standards required under subsection (a) shall ensure the lowest level or incidence of contamination that is reasonably achievable using the best available processing technology and practices.

''(2) CURRENT CONTAMINATION.—In determining what is reasonably achievable, the Secretary shall consider data on current levels or incidence of contamination, including what is being achieved by establishments in the upper quartile of performance in controlling the level or incidence of contamination.

''(3) INITIAL PATHOGENS.—Not later than 3 years after the date of enactment of this section, the Secretary shall propose pathogen reduction performance standards for at least 2 pathogens from the list published under subsection (b).

''(4) SUBSEQUENT PATHOGENS.—Not later than 1 year after proposing pathogen reduction standards for the initial pathogens under paragraph (3), and each year thereafter, the Secretary shall propose a pathogen reduction performance standard for at least 1 pathogen each year from the list published under subsection (b) until standards have been proposed for all pathogens on the list.

''(5) FINAL STANDARDS.—Not later than 1 year after proposing a pathogen reduction standard for a pathogen under this subsection, the Secretary shall promulgate a final pathogen reduction standard for the pathogen.

''(6) ZERO-TOLERANCE STANDARDS.—Nothing in this section affects the authority of the Secretary to establish a zero-tolerance pathogen reduction performance standard.

''(e) REVIEW OF STANDARDS.—

''(1) IN GENERAL.—Not later than 3 years after promulgation of a final pathogen reduction performance standard for a pathogen under subsection (d)(5), the Secretary shall review the standard to determine whether the standard continues to ensure the lowest level or incidence of contamination that is reasonably achievable using the best available processing technology and practices, taking into account the most recent survey conducted under subsection (c).

''(2) REVISIONS.—The Secretary shall revise the standard, as necessary, to comply with subsection (d).

''(f) ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary shall conduct regular microbial testing in establishments producing raw meat and meat products to determine compliance with the pathogen reduction performance standards promulgated under this section.

''(2) INSPECTIONS.—If the Secretary determines that an establishment fails to meet a standard promulgated under subsection (d) and that the establishment fails to take appropriate corrective action, as determined by the Secretary, the Secretary shall refuse to allow any meat or meat product subject to the standard and processed by the establishment to be labeled, marked, stamped or tagged as 'inspected and passed'.

''(g) REPORT ON HEALTH-BASED PATHOGEN PERFORMANCE STANDARDS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall submit to Congress a report on the scientific feasibility of establishing health-based performance standards for pathogens in raw meat and meat products.

''(2) FACTORS.—In preparing the report, the Secretary shall consider—

''(A) the scientific feasibility of determining safe levels for pathogens in raw meat and meat products;

''(B) the scientific and public health criteria that are relevant to determining the safe levels; and

''(C) other factors determined by the Secretary.

''(h) RELATIONSHIP TO ADULTERATION PROVISIONS.—Nothing in this section affects the applicability to pathogens of the provisions of this Act relating to adulteration.''.

(b) POULTRY AND POULTRY PRODUCTS.—The Poultry Products Inspection Act (21 U.S.C. 451 et seq.) is amended by inserting after section 7 (21 U.S.C. 456) the following:

''SEC. 7A. PATHOGEN PERFORMANCE STANDARDS.

''(a) IN GENERAL.—In order to protect the public health and promote food safety, the Secretary shall prescribe pathogen performance standards for the reduction of pathogens in raw poultry and poultry products processed by each establishment receiving inspection services under this Act.

''(b) LIST OF PATHOGENS.—

''(1) IN GENERAL.—In consultation with the Secretary of Health and Human Services, and taking into account data available from the Centers for Disease Control and Prevention, the Secretary shall identify the pathogens that make a significant contribution to the total burden of foodborne disease associated with poultry and poultry products.

''(2) PUBLICATION; UPDATES.—The Secretary shall—

''(A) publish a list of the pathogens described in paragraph (1) not later than 60 days after the date of enactment of this section; and

''(B) update and publish the list annually thereafter.

''(c) PATHOGEN SURVEYS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall initiate comprehensive, statistically representative surveys to determine the current levels and incidence of contamination of raw poultry and poultry products with the pathogens listed under subsection (b), including the variation in levels and incidence of contamination among establishments.

''(2) PUBLICATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall compile, and publish in the Federal Register, the results of the surveys.

''(3) UPDATES.—At least once every 3 years after the preceding surveys are conducted, the Secretary shall—

''(A) conduct surveys described in paragraph (1); and

''(B) compile and publish the results of the surveys in accordance with paragraph (2).

''(d) PATHOGEN REDUCTION PERFORMANCE STANDARDS.—

''(1) IN GENERAL.—The pathogen reduction performance standards required under subsection (a) shall ensure the lowest level or incidence of contamination that is reasonably achievable using the best available processing technology and practices.

''(2) CURRENT CONTAMINATION.—In determining what is reasonably achievable, the Secretary shall consider data on current levels or incidence of contamination, including what is being achieved by establishments in the upper quartile of performance in controlling the level or incidence of contamination.

''(3) INITIAL PATHOGENS.—Not later than 3 years after the date of enactment of this section, the Secretary shall propose pathogen reduction performance standards for at least 2 pathogens from the list published under subsection (b).

''(4) SUBSEQUENT PATHOGENS.—Not later than 1 year after proposing pathogen reduction standards for the initial pathogens under paragraph (3), and each year thereafter, the Secretary shall propose a pathogen reduction performance standard for at least 1 pathogen each year from the list published under subsection (b) until standards have been proposed for all pathogens on the list.

''(5) FINAL STANDARDS.—Not later than 1 year after proposing a pathogen reduction standard for a pathogen under this subsection, the Secretary shall promulgate a final pathogen reduction standard for the pathogen.

''(6) ZERO-TOLERANCE STANDARDS.—Nothing in this section affects the authority of the Secretary to establish a zero-tolerance pathogen reduction performance standard.

''(e) REVIEW OF STANDARDS.—

''(1) IN GENERAL.—Not later than 3 years after promulgation of a final pathogen reduction performance standard for a pathogen under subsection (d)(5), the Secretary shall review the standard to determine whether the standard continues to ensure the lowest level or incidence of contamination that is reasonably achievable using the best available processing technology and practices, taking into account the most recent survey conducted under subsection (c).

''(2) REVISIONS.—The Secretary shall revise the standard, as necessary, to comply with subsection (d).

''(f) ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary shall conduct regular microbial testing in establishments producing raw poultry and poultry products to determine compliance with the pathogen reduction performance standards promulgated under this section.

''(2) INSPECTIONS.—If the Secretary determines that an establishment fails to meet a standard promulgated under subsection (d) and that the establishment fails to take appropriate corrective action, as determined by the Secretary, the Secretary shall refuse to allow any poultry or poultry product subject to the standard and processed by the establishment to be labeled, marked, stamped or tagged as 'inspected and passed'.

''(g) REPORT ON HEALTH-BASED PATHOGEN PERFORMANCE STANDARDS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall submit to Congress a report on the scientific feasibility of establishing health-based performance standards for pathogens in raw poultry and poultry products.

''(2) FACTORS.—In preparing the report, the Secretary shall consider—

''(A) the scientific feasibility of determining safe levels for pathogens in raw poultry and poultry products;

''(B) the scientific and public health criteria that are relevant to determining the safe levels; and

''(C) other factors determined by the Secretary.

''(h) RELATIONSHIP TO ADULTERATION PROVISIONS.—Nothing in this section affects the applicability to pathogens of the provisions of this Act relating to adulteration.''.

SEC. 4. NATIONAL ADVISORY COMMITTEE FOR MICROBIOLOGY CRITERIA FOR FOODS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—In consultation with the Secretary of Health and Human Services, the Secretary of Agriculture (referred to in this section as the ''Secretary'') shall establish a National Advisory Committee for Microbiology Criteria for Foods (referred to in this section as the ''Committee'').

(2) ADMINISTRATION.—The Committee shall report to—

(A) the Secretary of Agriculture, acting through the Under Secretary for Food Safety; and

(B) the Secretary of Health and Human Services, acting through the Assistant Secretary for Health.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Committee shall be composed of not fewer than 9 nor more than 15 members appointed by the Secretary, including a Chairperson designated by the Secretary.

(2) QUALIFICATIONS.—In appointing members of the Committee, the Secretary shall appoint individuals who—

(A) are qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Committee; and

(B) to the maximum extent practicable, represent the fields of microbiology, risk assessment, epidemiology, public health, food science, veterinary medicine, and other relevant disciplines.

(3) PROHIBITION ON FEDERAL GOVERNMENT EMPLOYMENT.—A member of the Committee appointed under paragraph (1) shall not be an employee of the Federal Government.

(4) DATE OF APPOINTMENTS.—The appointment of an initial member of the Committee shall be made not later than 90 days after the date of enactment of this Act.

(5) TERM.—A member of the Committee shall be appointed for a term established by the Secretary.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the initial meeting of the Committee.

(2) MEETINGS.—The Committee shall meet at the call of the Chairperson, in consultation with the Secretary.

(3) QUORUM.—A majority of the members of the Committee shall constitute a quorum, but a lesser number of members may hold hearings.

(4) CONFLICTS OF INTEREST.—

(A) IN GENERAL.—Notwithstanding sections 201 through 209 of title 18, United States Code, a conflict of interest involving the appointment of a member of the Committee shall be waived under section 208(b)(3) of that title only if the member with the conflict of interest is essential to the completion of the work of the Committee.

(B) VOTING.—Notwithstanding subparagraph (A), a member of the Committee with a conflict of interest on a matter before the Committee shall not be allowed to vote on the matter.

(d) DUTIES.—

(1) IN GENERAL.—The Committee shall provide such independent, impartial, scientific advice to Federal food safety agencies as may be requested by the Secretary for use in the development of an integrated national food safety systems approach from farm-to-final consumption to ensure the safety of domestic, imported, and exported foods and reduce the public health burden of foodborne illness.

(2) FOOD SAFETY STANDARDS AND REGULATIONS.—

(A) IN GENERAL.—At the time at which the Secretary submits to any Federal agency for formal review and comment any standard or regulation proposed under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or any program administered by the Under Secretary for Food Safety, the Secretary shall make available to the Committee—

(i) the standard or regulation; and

(ii) relevant scientific and technical information possessed by the Secretary on which the proposed standard or regulation is based.

(B) ADVICE AND COMMENTS.—Not later than a date specified by the Secretary that is not

later than 90 days after receipt of the standard or regulation, the Committee may make available to the Secretary the advice and comments of the Committee on the adequacy of the scientific and technical basis for the proposed standard or regulation, together with any additional information the Committee considers appropriate.

(C) CONTEMPORANEOUS REVIEW.—To the maximum extent practicable, the review by the Committee under subparagraph (A) shall be conducted contemporaneously with review by other Federal agencies.

(e) POWERS.—

(1) HEARINGS.—The Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Committee may secure directly from a Federal agency such information as the Committee considers necessary to carry out this section.

(B) PROVISION OF INFORMATION.—On request of the Chairperson of the Committee, the head of the agency shall provide the information to the Committee.

(3) SUBCOMMITTEES AND INVESTIGATIVE PANELS.—

(A) IN GENERAL.—The Committee may establish such subcommittees and investigative panels as the Secretary and the Committee determine necessary to carry out this section.

(B) CHAIRPERSON.—Each subcommittee and investigative panel shall be chaired by a member of the Committee.

(4) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(5) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.

(f) COMMITTEE PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—A member of the Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Committee.

(2) TRAVEL EXPENSES.—A member of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Committee.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Committee may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Committee to perform the duties of the Committee.

(B) CONFIRMATION OF EXECUTIVE DIRECTOR.—The employment of an executive director shall be subject to confirmation by the Committee.

(C) COMPENSATION.—

(i) IN GENERAL.—Except as provided in clause (ii), the Chairperson of the Committee may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Committee may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(2) EXISTING FUNDS.—Any funds that are available to the National Advisory Committee on Microbiological Criteria in existence on the date of enactment of this Act shall be made available to the Committee.

SEC. 5. ENFORCEMENT OF HACCP AND SANITATION REQUIREMENTS.

(a) IN GENERAL.—The Secretary of Agriculture shall enforce the Hazard Analysis and Critical Control Point (HACCP) System requirements established under part 417 of title 9, Code of Federal Regulations (or successor regulations), and the sanitation requirements established under part 416 of title 9, Code of Federal Regulations (or successor regulations), in any official establishment.

(b) ENFORCEMENT.—

(1) IN GENERAL.—If the Secretary determines that an establishment fails to meet a requirement described in subsection (a) and that the establishment fails to take appropriate corrective action, as determined by the Secretary, the Secretary may refuse to allow any meat or meat product, or poultry or poultry product, subject to the standard and processed by the establishment to be labeled, marked, stamped or tagged as ''inspected and passed''.

(2) ADDITIONAL AUTHORITY.—The authority provided under paragraph (1) is in addition to any other authority the Secretary may have to enforce the requirements of this section.

SEC. 6. REGULATIONS.

(a) IN GENERAL.—Consistent with section 553 of title 5, United States Code, the Secretary of Agriculture shall have the authority to enforce the pathogen performance standards of the Secretary in accordance with the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

(b) CHALLENGES.—Subsection (a) does not prevent a challenge to the standards described in subsection (a) on any basis other than the basis that the Secretary lacks the authority to issue and enforce pathogen performance standards promulgated in accordance with section 553 of title 5, United States Code.

(c) EFFECTIVE DATE.—This section takes effect on January 1, 2000.

Mr. DURBIN. Mr. President, I am pleased to join Senator HARKIN today in introducing Kevin's Law, which is an essential piece of legislation that will clarify the U.S. Department of Agriculture's authority to enforce pathogen reduction standards in meat and poultry products.

Our country has been blessed with one of the safest and most abundant food supplies in the world. However, we can do better. While food may never be completely free of risk, we must strive to make our food as safe as possible. Foodborne illnesses and hazards are still a significant problem that cannot be passively dismissed.

The Centers for Disease Control and Prevention estimate as many as 76 million people suffer from foodborne illnesses each year. Of those individuals, approximately 325,000 will be hospitalized and more than 5,000 will die. With emerging pathogens, broader distribution patterns, an increasing volume of food imports, and changing consumption patterns, this situation is not likely to improve without decisive action.

Foodborne illnesses can have devastating effects on certain populations in our society. Children are especially vulnerable. Because their immune systems are not fully developed, they are at greater risk for developing life-threatening or fatal complications associated with foodborne illnesses. Quite simply, a child's lower weight means that it takes a smaller quantity of pathogens to make a child sick than it would a healthy adult. The elderly and those with compromised immune systems are also at high risk for developing life-threatening conditions associated with foodborne illnesses.

A key tool for addressing foodborne illness in this country has been the USDA's pathogen reduction/hazard analysis and critical control point, PR/HACCP, regulations that were phased in beginning in January 1998. Under these regulations, USDA developed a scientific approach aimed at protecting consumers from foodborne pathogens. Instead of a system based on sight, smell, and touch, USDA moved to a system that would successfully detect harmful pathogens whether visible or not.

A major part of this system includes testing for harmful pathogens, such as salmonella. USDA uses the data from this testing to determine if meat and poultry plants are producing products that are safe to consume.

USDA's pathogen testing regulations have provided consumers with increased confidence in the safety of meat and poultry products. However, in December of 2001, the Fifth Circuit Court of Appeals upheld an earlier district court decision that removes the USDA's authority to enforce its pathogen standards for salmonella. The result of this court case is that USDA can no longer ensure that meat and poultry plants comply with pathogen standards. This creates a significant risk that meat and poultry products contaminated with common but potentially deadly pathogens will be sold to unsuspecting consumers.

The legislation we are introducing today will clarify USDA's authority to enforce strong safety standards for contamination in meat and poultry products. Specifically, this legislation will provide the Secretary of Agriculture with the clear authority to control for pathogens and enforce pathogen performance standards for meat and poultry products. Only with this authority will the Secretary of Agriculture be able to ensure the safety of the meat and poultry products sold in this country.

We must work together to ensure that USDA has the necessary authority

to enforce pathogen performance standards that will protect public health. Let's not turn our back on food safety and consumer protection at such a critical time for food safety and security. I encourage my colleagues to join this effort to protect our food supply and public health.

By Mr. BOND:

S. 1105. A bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating the French Colonial Heritage Area in the State of Missouri as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BOND. Mr. President, I rise today to introduce legislation recognizing the historical significance of downtown Sainte Genevieve, MO. Sainte Genevieve was the first European settlement west of the Mississippi River, and still contains many structures and artifacts that have survived from its rich early history. Establishing this area as a unit of the National Park System will provide an unparalleled opportunity for Americans to be educated about our Nation's colonial past.

Sainte Genevieve was founded by French settlers in 1735. These early pioneers traveled south from French Canada, and built the rare French Colonial style structures that remain in place to this day. Today, the city contains an invaluable wealth of Native American and French Colonial sites, artifacts, and architecture. Perhaps most impressively, downtown Sainte Genevieve contains three of only five poteaux-en-Terre, post in the ground, vertical log French homes remaining in North America, dating from approximately 1800.

In addition to the historic downtown district, the area adjacent to Sainte Genevieve is rich in historic sites. The ''Grand Champ'' common field of the French colonists still retains its original field land pattern. The area's saline salt springs were an important industry source for Native American and European settlers. And nearby ceremonial mounds are evidence of a prehistoric Native American village.

This area is a truly valuable asset to the State of Missouri, and I feel that it is only fair to share it with the entire Nation by establishing the French Colonial Heritage Area as a unit of the National Park System. My legislation would take the first step toward such an establishment by directing the National Park Service to conduct a study of the historic features of Sainte Genevieve. After a thorough study, I am confident that the National Park Service will determine that Sainte Genevieve is the best tool with which to tell the important and fascinating story of the French in the New World.

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

S. 1106. A bill to establish National Standards for Fishing Quota Systems; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today, along with Senator KERRY, to introduce the Fishing Quota Act of 2003 which will address one of the most complex policy questions in fisheries management—fishing quotas. This bill will amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize the establishment of new fishing quota systems. This legislation will in no way whatsoever force Fishing Quota programs upon any regional fishery management council and this is not a mandate to use Fishing Quota programs. Rather, it is intended to provide the councils with an additional conservation and management tool.

Fishing Quota programs can drastically change the face of fishing communities and the fundamental principles of conservation and management. Therefore, this legislation was developed in a careful and meaningful manner over the span of many years with significant input and participation from all of the many affected and interested parties.

In 1996, Congress reauthorized the Magnuson-Stevens Fishery Conservation and Management Act through enactment of the Sustainable Fisheries Act, SFA. The SFA contained the most substantial improvements to fisheries conservation since the original passage of the Magnuson-Stevens Act in 1976. More specifically, the SFA included a five year moratorium on new fishing quota programs and required the National Academy of Sciences, NAS, to study and report on the issue.

In 1999, the NAS issued its report, Sharing the Fish, which contained a number of critically important recommendations addressing the social, economic, and biological aspects of Fishing Quota programs. The Fishing Quota Act of 2003 incorporates many of the recommendations in this report and provides the regional councils with the flexibility to adopt additional NAS recommendations.

During the 106th Congress, the Subcommittee on Oceans and Fisheries traveled across the country and held six hearings on reauthorizing the Magnuson-Stevens Act. We began the process in Washington, DC, and then visited fishing communities in Maine, Louisiana, Alaska, Washington, and Massachusetts. During the course of those hearings, we heard official testimony from over 70 witnesses and received statements from many more fishermen during open microphone sessions at each field hearing. The Subcommittee heard the comments, views, and recommendations of Federal and State officials, regional council chairmen and members, other fisheries managers, commercial and recreational fishermen, members of the conservation community, and many other interested in these important issues. After these hearings, I introduced the Individual Fishing Quota Act of 2001, S. 637, at the beginning of the 107th Congress beginning the legislative dialogue. Since then, we have heard from many stakeholders who assisted the Subcommittee in shaping and re-shaping this bill.

The Fishing Quota Act of 2003 creates a framework under which fishery management plans, FMPs, or plan amendments may establish a new fishing quota system. As with other components of fisheries conservation and management, there is no ''one-size-fits-all'' solution to Fishing Quota programs. Therefore, this bill sets certain conditions under which Fishing Quota programs may be developed, if such a program is desired. In doing so, it clearly provides the regional fishery management councils and the affected fishermen with the flexibility to shape any new Fishing Quota program to fit the needs of the fishery.

The bill ensures that any regional council which establishes a new fishing quota program will promote sustainable management of the fishery; require fair and equitable allocation of fishing quotas; minimize negative social and economic impacts on local coastal communities; ensure adequate enforcement of the system; and take into account present participation and historical fishing practices of the relevant fishery. Additionally, the bill requires the Secretary of Commerce to conduct referenda to ensure that those most affected by fishing quotas will have the opportunity to formally approve the adoption of any new fishing quota program by a two-thirds vote.

This bill authorizes the potential allocation of fishing quotas to fishing vessel owners, fishermen, and crew members who are citizens of the United States. In addition, participation in the fishery is required for a person to obtain quota. Moreover, this bill permits councils to allocate quota shares to entry-level fishermen, small vessel owners, or crew members who may not otherwise be eligible for individual quotas. While this bill authorizes the transfer of fishing quotas, it requires the regional councils to define and prohibit an excess accumulation of quota shares.

This is a good bill which allows Fishing Quota programs to be created where they are needed and desired. The Fishing Quota Act of 2003 incorporates many of the suggestions we heard from those men and women who fish for a living and those who are most affected by the law and its regulations. I appreciate the participation of Senator KERRY and all the impacted stakeholders who assisted in drafting this legislation. I look forward to moving this bill through the legislative process toward final passage.

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

S. 1106

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 ''Fishing Quota Act of 2003''.

SEC. 2. FISHING QUOTA SYSTEMS.

(a) IN GENERAL.—Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853) is amended—

(1) by striking subsection (f)(6) and inserting the following:

''(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

''(A) the conservation requirements of this Act with respect to the fishery;

''(B) present participation in the fishery;

''(C) historical fishing practices in, and dependence on, the fishery;

''(D) the economics of the fishery;

''(E) the capability of fishing vessels used in the fishery to engage in other fisheries;

''(F) the cultural and social framework relevant to the fishery and any affected fishing communities;

''(G) the fair and equitable distribution of a public resource; and

''(H) any other relevant considerations.'';

(2) by striking subsection (d) and inserting the following:

''(d) FISHING QUOTA SYSTEMS.—

''(1) ESTABLISHMENT.—Any fishery management plan or amendment that is prepared by any Council, or by the Secretary, with respect to any fishery, may establish a fishing quota system consistent with the provision of subsection (b)(6).

''(2) IN GENERAL.—The Councils and Secretary shall ensure that any such fishing quota system submitted and approved after September 30, 2002, complies with the requirements of this Act, and;

''(A) shall prevent any person from acquiring an excessive share of the fishing quotas issued, as appropriate for the fishery, and establish any other limits or measures necessary to prevent inequitable concentration of quota share;

''(B) shall provide for the fair and equitable initial allocation of quota share and in such allocation—

''(i) shall take into account present and historic participation in the fishery;

''(ii) shall consider allocating a portion of the annual harvest to entry-level fishermen, small vessel owners, skippers, crew members, and fishing communities; and

''(iii) may allocate shares among categories of vessels or gear types.

''(C) shall contain provisions for the regular review and evaluation of the system, including timetables and criteria for evaluating performance, and actions to be taken for failure to meet the criteria;

''(D) shall contain criteria that would govern limitation, revocation, renewal, reallocation, or reissuance of fishing quota, including:

''(i) reallocation or reissuance of quota revoked pursuant to section 308 of this Act;

''(ii) revocation and reissuance of fishing quota if the owner of the quota cease to substantially participate in the fishery; and

''(iii) exceptions to revocation or limitation in cases of death, disablement, undue hardship, or in any case in which fishing is prohibited by the Secretary;

''(E) shall provide a process for appeals of decisions on—

''(i) eligibility of a person to receive or bid for an allocation of quota shares; and

''(ii) limitations, restrictions and revocations of quota held by a person.

''(F) shall promote management measures top improve the conservation and management of the fishery, including reduction by bycatch;

''(G) shall provide for effective enforcement, monitoring, a management of such system, including adequate data collection and use of observers at least at a level of coverage that should yield statistically significant results;

''(H) may provide for the sale, lease or transfer of quota shares and limitations thereto;

''(I) shall provide a mechanism, such as fees as authorized by section 304(d)(2), including fees payable on quota transfers to recover costs related to administering and implementing the program, including enforcement, management and data collection (including adequate observer coverage), if the assessment of such fees is proportional to the amount of quota held and fished by each quota holder and if such fees are used only for that fishing quota system;

''(J) shall consider the use of community or area-based approaches and strategies in developing fishing quota systems and consider other management measures, including measures to facilitate formation of fishery cooperative arrangements, taking into account proximity to and dependence on the resource, contribution of fishing to the social and economic status of the community, and historic participation in the fishery; and

''(K) shall include procedures and requirements necessary to carry out subparagraphs (A) through (J).

''(3) NO CREATION OF RIGHT, TITLE, OR INTEREST.—A fishing quota or other limited access system authorization—

''(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

''(B) may be revoked or limited at any time in accordance with this Act, including for failure to comply with the terms of the plan or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

''(C) shall not confer any right of compensation to the holder of such fishing quota or other such limited access system authorization if it is revoked or limited;

''(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested; and

''(E) shall be considered a grant of permission to the holder of the fishing quota to engage in activities permitted by the fishing quota system.

''(4) ELIGIBILITY.—Persons eligible to hold fishing quota shares are persons who are United States citizens, or who are United States nationals or permanent resident aliens qualified by Federal law to participate in the fishery.

''(5) DURATION.—Any fishing quota system established under this section after the date of enactment of the Fishing Quota Act of 2003 shall expire at the end of a 10-year period beginning on the date the system is established, or at the end of successive 10 year periods thereafter, unless extended by a fishery management plan amendment is accordance with this Act, for successive periods not to exceed 10 years.

''(6) REFERENDUM PROCEDURES.—

''(A) Except as provided in subparagraph (C) for the Gulf of Mexico commercial red snapper fishery, a Council may not submit, and the Secretary not approve or implement a fishery management plan or amendment that creates a fishing quota system, including a secretarial plan, unless such a system, as ultimately developed, has been approved by more than two-thirds of those voting in a referendum among eligible permit holders. If a fishing quota system fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

''(B) The Secretary shall conduct the referendum referred to in this paragraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures and eligibility requirements for the referendum process and the proposed fishing quota system. The Secretary shall within one year of enactment of the Fishing Quota Act of 2003 publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

''(C) The provisions of section 407(e) shall apply in lieu of this paragraph for any fishing quota system for the Gulf of Mexico commercial red snapper fishery.

''(D) Chapter 35 of title 44, United States Code, (commonly known as the ''Paperwork Reduction Act'') does not apply to the referenda conducted under this paragraph.

''(7)(A) No provision of law shall be construed to limit the authority of a Council to submit, or the Secretary to approve, the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including a fishing quota system.

''(B) This subsection shall not apply to, or be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, Southern Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

''(8)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the——

''(i) purchase of fishing quotas in that fishery by fishermen who fish from small vessels; and

''(ii) first-time purchase of fishing quotas in that fishery by entry level fishermen.

''(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.''.

(b) INDEPENDENT REVIEW.—Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853) is further amended by adding at the end the following:

''(e)(1) Within 5 years after the date of enactment of the Fishing Quota Act of 2003, and every 5 years thereafter, the National Research Council shall provide an independent review of the effectiveness of fishing quota systems conducted in Federal fisheries.

''(2) The review shall be conducted by an independent panel of individuals who have knowledge and experience in fisheries conservation and management, in the implementation of fishing quota systems, or in the social or economic characteristics of fisheries. The National Research Council shall ensure that members of the panel are qualified for appointment, are not active quota share holders, and provide fair representation to interests affected by such programs.

''(3) The independent review of fishing quota systems shall include—

''(A) a determination of how fishing quota systems affect fisheries management and contribute to improved management, conservation (including bycatch reduction) and safety in the fishery;

''(B) formal input in the form of testimony from quota holders relative to the effectiveness of the fishing quota system;

''(C) an evaluation of the social, economic and biological consequences of the quota system, including the economic effects of the system on fishing communities;

''(D) an evaluation of the costs of implementing, monitoring and enforcing the systems and the methods used to establish or allocate individual quota shares; and

''(E) recommendations to the Councils and the Secretary to ensure that quota systems meet the requirements of this Act and the goals of the plans, and recommendations to the Secretary for any changes to regulations issued under section 304(i).

''(4) The Secretary shall submit the report to the Congress and any appropriate Councils within 60 days after the review is completed.''.

(c) ACTION ON LIMITED ACCESS SYSTEMS.—Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854) is amended by adding at the end the following:

''(i) ACTION ON LIMITED ACCESS SYSTEMS.—Within 1 year after the date of enactment of the Fishing Quota Act of 2003, the Secretary shall issue regulations which establish requirements for establishing a fishing quota system. Nothing in this paragraph prohibits a Council or the Secretary from initiating development of a fishing quota system consistent with the provisions of this Act pending publication of the final regulations.''.

(d) DEFINITIONS.—Section 3 of the Magnuson-Stevens Fishery Management and Conservation Act (16 U.S.C. 1802) is amended by—

(1) adding at the end the following:

''(46) The term 'United States Citizen' means an individual who is a citizen of the United States or a corporation, partnership, association or other entity that qualifies to document a fishing vessel as a vessel of the United States under chapter 121 of title 46, United States Code.''; and

(2) striking '' 'individual fishing quota' '' in paragraph (21) and inserting '' 'fishing quota system' ''.

(e) CONFORMING AMENDMENTS.—

(1) The following provisions of that Act are amended by striking ''individual fishing quota'' and inserting ''fishing quota'';

(A) Section 304(c)(3) (16 U.S.C. 1854(c)(3)).

(B) Section 304(d)(2)(A)(i) (16 U.S.C. 1854(D)(2)(A)(i)).

(C) Section 402(b)(1)(D) (16 U.S.C. 1881a(b)(1)(D)).

(D) Section 407(a)(1)(D), (c)(1), and (c)(2)(B) (16 U.S.C. 1883(a)(1)(D), (c)(1), and (c)(2)(B)).

(2) section 305(h)(1) (16 U.S.C. 1855(h)(1) is amended by striking ''individual''.

SEC. 3. GULF OF MEXICO FISHING QUOTA SYSTEMS.

Section 407(c) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1883) is amended by adding at the end the following:

''(3) The initial referendum described in paragraph (1) shall be used to determine support for whether the sale, transfer, or lease of quota shares shall be allowed.''.

Mr. KERRY. Mr. President, I rise today with my colleague, Ms. SNOWE, to introduce the Fishing Quota Act of 2003, legislation to establish national criteria governing the use of individual fishing quota IFQ systems. Work began in earnest on this bipartisan bill in the Commerce Committee last spring, as the expiration of the national moratorium on the use of IFQs approached, and small boat fishermen voiced concerns that existing legislative criteria governing the use of IFQs would not offer sufficient protection to communities. I would like to thank Subcommittee Chair SNOWE for her efforts to work with me and with other members of the Commerce Committee on this legislation, which draws from separate IFQ legislation that both Senator SNOWE and I introduced beginning in the 106th Congress.

The IFQ moratorium established under the 1996 Sustainable Fisheries Act was set to expire September 30, 2000. Senator SNOWE and I supported a 2-year extension of that moratorium to allow for hearings and full consultation with affected groups on the issues surrounding IFQs. Our discussions focused on the need to provide regional flexibility to use IFQs as a management tool, while providing national ''rules of the road.'' Such rules of the road would ensure IFQ systems developed after expiration of the moratorium are adopted with the support of the fishery, allocate quota fairly and equitably, address region-specific needs, further the conservation and management goals of the Magnuson-Stevens Act, prevent consolidation of quota, address the needs of small fishing communities, and recognize both the public nature of the resource and that issuance of an IFQ does not give rise to a compensable property right.

To develop such rules, we worked with fellow Commerce Committee members, including Senators BREAUX, LOTT, BOXER, STEVENS, and CANTWELL, consulted with interested groups, and obtained technical advice from the National Marine Fisheries Service. While New England has historically been opposed to IFQs, other regions are interested in utilizing IFQ programs in certain fisheries. I believe the resulting bill provides a balance between the need to provide national policy guidance that considers the concerns of communities and harvesters, but allows for development of IFQ systems, where appropriate, on a fishery-by-fishery basis. This preserves the balanced regional approach to fishery management that Congress intended in the Magnuson-Stevens Act. I also want to clarify that this bill does not authorize the establishment of ''processor quota,'' and relates only to issuance of harvester quota.

The bill Senator SNOWE and I are introducing today sets forth a set of national criteria that councils wishing to adopt IFQs would follow. Importantly, this bill contains a provision that directs councils to consider the use of community or area-based approaches and strategies that would preserve the vitality of small fishing communities, including the allocation of quota to a fishing community. It also directs councils to consider use of other management measures, including those that would facilitate formation of fishery cooperative arrangements, taking account of the dependence of coastal communities on these fisheries.

This bill addresses many of the concerns raised by fishermen, and I understand the many concerns of small fisherman in New England regarding the use of IFQs. I believe this bill gives fishermen the power to decide whether to implement an IFQ program and ensures that those who do will operate under a fair system. First, no region could implement an IFQ system without approval of a two-thirds majority of eligible permit holders through a referendum process run by the Secretary of Commerce. In addition, any IFQ system developed under the legislation would have to meet a set of national criteria. These national criteria would include: (1) ensuring a fair and equitable initial allocation of quota, including the establishment of an appeals process for qualification and allocation decisions, taking into account present and historic participation in the fishery; (2) establishing limits necessary to prevent inequitable concentration of quota share; (3) preventing any person from acquiring an ''excessive share''; (4) considering allocation of a portion of the annual harvest specifically to small fishermen, skippers, crew members, fishing communities, or categories of vessels or gear types; and (5) providing for revocation of quota if the owner is no longer an active fisherman.

I also believe this bill responds to concerns that IFQ systems would undermine the national interest in conserving fishery resources held in the public trust. In order to respond to those concerns, the bill would: (1) specify that an IFQ is a permit under the Magnuson-Stevens Act and does not confer any right of compensation or any right, title or interest to any fish before it is harvested; (2) established that the quota expires after 10 years, unless extended by a fishery management plan; (3) require that the systems promote management measures to improve the conservation and management of the fishery, including reduction of bycatch; (4) provide for regular review and evaluation of the system, including specifying actions to be taken for any failure to meet the criteria; (5) require that the systems provide for effective enforcement, monitoring, and management, including use of observers; and (6) require that quota be revoked from individuals found to be subject to civil penalties under section 308 of the Magnuson-Stevens Act.

The bill also would require a 5-year recurring independent review of IFQ systems by the National Research Council, to: (1) evaluate the effectiveness of such systems and determine who the systems contribute to improved management, conservation and safety; (2) evaluate the social, economic and biological consequences of the systems, including economic impacts on fishing communities; (3) evaluate the costs of implementation; and (4) provide recommendations to ensure the systems meet Magnuson-Stevens Act requirements and the goals of the plans.

I believe this legislation provides guidelines for the use of IFQs that will help ensure the health of our marine fisheries. During the last reauthorization of the Magnuson-Stevens Act, our

Nation's fisheries were at a crossroads, and action was required to remedy our marine resource management problems, to preserve the way of life in our coastal communities, and to promote the sustainable use and conservation of our marine resources for future generations and for the economic good of the Nation. We must stay the course, and this bill will help us do just that. I remain committed to the goal of establishing biologically and economically sustainable fisheries so that fishing will continue to be an important part of the culture and economy of coastal communities throughout Massachusetts, as well as the economy of the Nation.

By Mr. THOMAS:

S. 1107. A bill to enhance the Recreation Fee Demonstration Program for the National Park Service, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. THOMAS. Mr. President, I rise today to introduce the Recreation Fee Authority Act of 2003. This legislation modifies the congressionally created Recreation Fee Demonstration Program.

The issue of user fees on public lands is a difficult one. As you know, our Nation's parks and recreation areas are in serious trouble and have significant maintenance and infrastructure needs. The National Park Service alone has roughly a $5 billion backlog in maintenance and infrastructure repair. There are a number of reasons for this funding shortage, including poor park management, congressional inaction and apathy from the American public.

Currently, the Recreation Fee Demonstration Program allows the National Park Service, Bureau of Land Management, Fish and Wildlife Service and the U.S. Forest Service to collect and expend funds for areas in need of additional financial support. Agencies collect fees for admission to a unit or site for special uses such as boating and back country camping fees and are able to use 80 percent of the receipts for protection and enhancement in that area. Fees are typically used for visitor services, maintenance and repair of facilities as well as cultural and natural resource management. The remaining 20 percent is used on an agency-wide basis for parts of the system, which are precluded from participating in the Recreation Fee Demonstration program.

The legislation I am introducing today allows permanent authorization of the Recreation Fee Demonstration Program for national parks, and provides some new flexibility. For example, many visitors frequent national and State parks, but are not allowed to use State and national passes interchangeably. In cooperation with State agencies, the Secretary of the Interior will be authorized to enter into revenue sharing agreements to accept state and national park passes at sites within that state—providing a cost savings and convenience for the visitor.

In the past, concerns have been expressed about ''nickel and dime'' efforts where there appears to be a lack of planning and coordination by agency officials. Fee programs under this legislation would be established at fair and equitable rates. Each unit would perform an analysis to consider benefits and services provided to the visitor, cumulative effect of fees, public policy and management objectives and feasibility of fee collection. This review would serve as a business plan for each site so that managers could utilize scarce resources in the most efficient manner.

The Recreation Fee Demonstration program was an effort by Congress to allow public land agencies to obtain funding in addition to their annual appropriations. This legislation will help provide resources for badly needed improvement projects and ensure an enhanced experience for all visitors.

We need to guarantee our national treasures are available for generations to come. I believe that Congress, the National Park Service and those interested in helping our parks should cooperate on initiatives to protect resources, increase visitor services and improve management throughout the system. Working together, we can ensure that these areas will remain affordable and accessible for everyone.

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. 1107

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 ''Recreational Fee Authority Act of 2003''.

SEC. 2. RECREATION FEE AUTHORITY.

(a) IN GENERAL.—Beginning in Fiscal Year 2004 and thereafter, the Secretary of the Interior (''Secretary'') may establish, modify, charge, and collect fees for admission to a unit of the National Park System and the use of National Park Service (''Service'') administered areas, lands, sites, facilities, and services (including reservations) by individuals and/or groups. Fees shall be based on an analysis by the Secretary of—

(A) the benefits and services provided to the visitor;

(B) the cumulative effect of fees;

(C) the comparable fees charged elsewhere and by other public agencies and by nearby private sector operators;

(D) the direct and indirect cost and benefit to the government;

(E) public policy or management objectives served;

(F) economic and administrative feasibility of fee collection, and

(G) other factors or criteria determined by the Secretary.

(b) NUMBER OF FEES.—The Secretary shall establish the minimum number of fees and shall avoid the collection of multiple or layered fees for a wide variety of uses, activities or programs.

(c) ANALYSIS.—The results of the analysis together with the Secretary's determination of appropriate fee levels shall be transmitted to the Congress at least three months prior to publication of such fees in the Federal Register. New fees and any increases or decreases in established fees shall be published in the Federal Register and no new fee or change in the amount of fees shall take place until at least 12 months after the date the notice is published in the Federal Register.

(d) ADDITIONAL AUTHORITIES.—Beginning on October 1, 2003 the Secretary may enter into agreements, including contracts to provide reasonable commissions or reimbursements with any public or private entity for visitor reservation services, fee collection and/or processing services.

(e) ADMINISTRATION.—The Secretary may provide discounted or free admission days or use, may modify the National Park Passport, established pursuant to Public Law 105–391, and shall provide information to the public about the various fee programs and the costs and benefits of each program.

(f) STATE AGENCY ADMISSION AND SPECIAL USE PASSES.—Effective October 1, 2003 and notwithstanding the Federal Grants Cooperative Agreements Act, the Secretary may enter into revenue sharing agreements with State agencies to accept their annual passes and convey the same privileges, terms and conditions as offered under the auspices of the National Park Passport, to State agency annual passes and shall only be accepted for all of the units of the National Park System within the boundaries of the State in which the specific revenue sharing agreement is entered into except where the Secretary has established a fee that includes a unit or units located in more than one State.

SEC. 3. DISTRIBUTION OF RECEIPTS.

(a) Without further appropriation, all receipts collected pursuant to the Act or from sales of the National Park Passport shall be retained by the Secretary and may be expended as follows—

(1) 80 percent of amounts collected at a specific area, site, or project as determined by the Secretary, shall remain available for use at the specific area, site or project, except for those units of the National Park System that participate in an active revenue sharing agreement with a State under Section 2(f) of this Act, not less than 90 percent of amounts collected at a specific area, site, or project shall remain available for use.

(2) The balance of the amounts collected shall remain available for use by the Service on a Service-wide basis as determined by the Secretary.

(3) Monies generated as a result of revenue sharing agreements established pursuant to Section 2(f) may provide for a fee-sharing arrangement. The Service shares of fees shall be distributed equally to all units of the National Park System in the specific States that are parties to the revenue sharing agreement.

(4) Not less than 50 percent of the amounts collected from the sale of the National Park Passport shall remain available for use at the specific area, site, or project at which the fees were collected and the balance of the receipts shall be distributed in accordance with paragraph 2 of this Section.

SEC. 4. EXPENDITURES

(a) USE OF FEES AT SPECIFIC AREA, SITE, OR PROJECT.—Amounts available for expenditure at a specific area, site or project shall be accounted for separately and may be used for—

(1) repair, maintenance, facility enhancement, media services and infrastructure including projects and expenses relating to visitor enjoyment, visitor access, environmental compliance, and health and safety;

(2) interpretation, visitor information, visitor service, visitor needs assessments, monitoring, and signs;

(3) habitat enhancement, resource assessment, preservation, protection, and restoration related to recreation use, and

(4) law enforcement relating to public use and recreation.

(b) The Secretary may use not more than fifteen percent of total revenues to administer the recreation fee program including direct operating or capital costs, cost of fee collection, notification of fee requirements, direct infrastructure, fee program management costs, bonding of volunteers, start-up costs, and analysis and reporting on program accomplishments and effects.

SEC. 5. REPORTS.

(a) On January 1, 2006 and every three years thereafter the Secretary shall submit to the Congress a report detailing the status of the Recreation Fee Program conducted in units of the National Park System including an evaluation of the Recreation Fee Program conducted at each unit of the National Park System; a description of projects that were funded, work accomplished, and future projects and programs for funding with fees, and any recommendations for changes in the overall fee system.

By Mr. TALENT (for himself and Mr. WYDEN):

S. 1109. A bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes; to the Committee on Finance.

Mr. TALENT. 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. 1109

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 ''Build America Bonds Act of 2003''.

(b) REFERENCES TO INTERNAL REVENUE CODE OF 1986.—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.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Our Nation's highways, transit systems, railroads, airports, ports, and inland waterways drive our economy, enabling all industries to achieve growth and productivity that makes America strong and prosperous.

(2) The establishment, maintenance, and improvement of the national transportation network is a national priority, for economic, environmental, energy, security, and other reasons.

(3) The ability to move people and goods is critical to maintaining State, metropolitan, rural, and local economies.

(4) The construction of infrastructure requires the skills of numerous occupations, including those in the contracting, engineering, planning and design, materials supply, manufacturing, distribution, and safety industries.

(5) Investing in transportation infrastructure creates long-term capital assets for the Nation that will help the United States address its enormous infrastructure needs and improve its economic productivity.

(6) Investment in transportation infrastructure creates jobs and spurs economic activity to put people back to work and stimulate the economy.

(7) Every billion dollars in transportation investment has the potential to create up to 47,500 jobs.

(8) Every dollar invested in the Nation's transportation infrastructure yields at least $5.70 in economic benefits because of reduced delays, improved safety, and reduced vehicle operating costs.

SEC. 3. CREDIT TO HOLDERS OF BUILD AMERICA BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new subpart:

"Subpart H—Nonrefundable Credit for Holders of Build America Bonds

''Sec. 54. Credit to holders of Build America bonds.

"SEC. 54. CREDIT TO HOLDERS OF BUILD AMERICA BONDS.

''(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a Build America bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

''(b) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a Build America bond is 25 percent of the annual credit determined with respect to such bond.

''(2) ANNUAL CREDIT.—The annual credit determined with respect to any Build America bond is the product of—

''(A) the applicable credit rate, multiplied by

''(B) the outstanding face amount of the bond.

''(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations (determined in such manner as the Secretary prescribes).

''(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term 'credit allowance date' means—

''(A) March 15,

''(B) June 15,

''(C) September 15, and

''(D) December 15.

Such term includes the last day on which the bond is outstanding.

''(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—

''(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this part (other than this subpart and subpart C).

''(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

''(d) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

''(e) BUILD AMERICA BOND.—For purposes of this part, the term 'Build America bond' means any bond issued as part of an issue if—

''(1) 95 percent or more of the proceeds from the sale of such issue are to be used—

''(A) for expenditures incurred after the date of the enactment of this section for any qualified project, or

''(B) for deposit in the Build America Trust Account for repayment of Build America bonds at maturity,

''(2) the bond is issued by the Build America Corporation, is in registered form, and meets the Build America bond limitation requirements under subsection (f),

''(3) the Build America Corporation certifies that it meets the State contribution requirement of subsection (k) with respect to such project, as in effect on the date of issuance,

''(4) the Build America Corporation certifies that the State in which an approved qualified project is located meets the requirement described in subsection (l),

''(5) except for bonds issued in accordance with subsection (f)(4), the term of each bond which is part of such issue does not exceed 30 years,

''(6) the payment of principal with respect to such bond is the obligation of the Build America Corporation, and

''(7) the issue meets the requirements of subsection (g) (relating to arbitrage).

''(f) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

''(1) NATIONAL LIMITATION.—There is a Build America bond limitation for each calendar year. Such limitation is—

''(A) for 2004—

''(i) with respect to bonds described in subsection (e)(1)(A), $50,000,000,000, plus

''(ii) with respect to bonds described in subsection (e)(1)(B), such amount (not to exceed $15,000,000,000) as determined necessary by the Build America Corporation to provide funds in the Build America Trust Account for the repayment of Build America bonds at maturity, and

''(B) except as provided in paragraph (3), zero thereafter.

''(2) LIMITATION ALLOCATED TO QUALIFIED PROJECTS AMONG STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the limitation applicable under paragraph (1)(A)(i) for any calendar year shall be allocated by the Build America Corporation for qualified projects among the States under an allocation plan established by the Corporation and submitted to Congress for consideration.

''(B) MINIMUM ALLOCATIONS TO STATES.—In establishing the allocation plan under subparagraph (A), the Build America Corporation shall ensure that the aggregate amount allocated for qualified projects located in each State under such plan is not less than $500,000,000.

''(3) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

''(A) the Build America bond limitation amount, exceeds

''(B) the amount of bonds issued during such year by the Build America Corporation,

the Build America bond limitation amount for the following calendar year shall be increased by the amount of such excess. Any carryforward of a Build America bond limitation amount may be carried only to calendar year 2005 or 2006.

''(4) ISSUANCE OF SMALL DENOMINATION BONDS.—From the Build America bond limitation for each year, the Build America Corporation shall issue a limited quantity of Build America bonds in small denominations suitable for purchase as gifts by individual investors wishing to show their support for investing in America's infrastructure.

''(g) SPECIAL RULES RELATING TO ARBITRAGE.—

''(1) IN GENERAL.—Subject to paragraph (2), an issue shall be treated as meeting the requirements of this subsection if as of the date of issuance, the Build America Corporation reasonably expects—

''(A) to spend at least 95 percent of the proceeds from the sale of the issue for 1 or more qualified projects within the 3-year period beginning on such date,

''(B) to incur a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue, or to commence construction, with respect to such projects within the 6-month period beginning on such date, and

''(C) to proceed with due diligence to complete such projects and to spend the proceeds from the sale of the issue.

''(2) RULES REGARDING CONTINUING COMPLIANCE AFTER 3-YEAR DETERMINATION.—If at least 95 percent of the proceeds from the sale of the issue is not expended for 1 or more qualified projects within the 3-year period beginning on the date of issuance, but the requirements of paragraph (1) are otherwise met, an issue shall be treated as continuing to meet the requirements of this subsection if either—

''(A) the Build America Corporation uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of such 3-year period, or

''(B) the following requirements are met:

''(i) The Build America Corporation spends at least 75 percent of the proceeds from the sale of the issue for 1 or more qualified projects within the 3-year period beginning on the date of issuance.

''(ii) The Build America Corporation spends at least 95 percent of the proceeds from the sale of the issue for 1 or more qualified projects within the 4-year period beginning on the date of issuance, and uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of the 4-year period beginning on the date of issuance.

''(h) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

''(1) IN GENERAL.—If any bond which when issued purported to be a Build America bond ceases to be such a qualified bond, the Build America Corporation shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

''(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the 2 preceding calendar years, and

''(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

''(2) FAILURE TO PAY.—If the Build America Corporation fails to timely pay the amount required by paragraph (1) with respect to such bond, the tax imposed by this chapter on each holder of any such bond which is part of such issue shall be increased (for the taxable year of the holder in which such cessation occurs) by the aggregate decrease in the credits allowed under this section to such holder for taxable years beginning in such 3 calendar years which would have resulted solely from denying any credit under this section with respect to such issue for such taxable years.

''(3) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (2) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under paragraph (2) shall not be treated as a tax imposed by this chapter for purposes of determining—

''(i) the amount of any credit allowable under this part, or

''(ii) the amount of the tax imposed by section 55.

''(i) BUILD AMERICA TRUST ACCOUNT.—

''(1) IN GENERAL.—The following amounts shall be held in a Build America Trust Account by the Build America Corporation:

''(A) The proceeds from the sale of all bonds issued under this section.

''(B) The amount of any matching contributions with respect to such bonds.

''(C) The investment earnings on proceeds from the sale of such bonds.

''(D) Any earnings on any amounts described in subparagraph (A), (B), or (C).

''(2) USE OF FUNDS.—Amounts in the Build America Trust Account may be used only to pay costs of qualified projects, redeem Build America bonds, and fund the operations of the Build America Corporation, except that amounts withdrawn from the Build America Trust Account to pay costs of qualified projects may not exceed the aggregate proceeds from the sale of Build America bonds described in subsection (e)(1)(A).

''(3) USE OF REMAINING FUNDS IN BUILD AMERICA TRUST ACCOUNT.—Upon the redemption of all Build America bonds issued under this section, any remaining amounts in the Build America Trust Account shall be available to the Build America Corporation for any qualified project.

''(j) QUALIFIED PROJECT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified project' means the financing of capital improvements for any transportation infrastructure project of any governmental unit or other person, including highways, transit systems, railroads, airports, ports, and inland waterways, proposed by a State and approved by the Build America Corporation.

''(2) APPROVAL GUIDELINES AND CRITERIA.—Not later than 60 days after the date of the enactment of this section, the Build America Corporation shall consult with the appropriate committees of Congress regarding the development of guidelines and criteria for the approval by the Corporation of projects as qualified projects for inclusion in the allocation plan established under subsection (f)(2)(A) and shall submit such guidelines and criteria to such committees. The guidelines and criteria shall—

''(A) to the maximum extent, be consistent with statutory provisions governing the approval of transportation projects, as in effect on such date, and

''(B) require the Build America Corporation—

''(i) to base such approval on—

''(I) the results of alternatives analysis and preliminary engineering, and

''(II) a comprehensive review of mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and

''(ii) to give preference to—

''(I) projects supported by evidence of stable and dependable financing sources to construct, maintain, and operate the infrastructure,

''(II) projects expected to have a significant impact on traffic congestion, and

''(III) projects which promote regional balance in infrastructure investment.

''(k) STATE CONTRIBUTION REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of subsection (e)(3), the State contribution requirement of this subsection is met with respect to any qualified project if the Build America Corporation has received from 1 or more States, not later than the date of issuance of the bond, written commitments for matching contributions of not less than 20 percent of the cost of the qualified project.

''(2) STATE MATCHING CONTRIBUTIONS MAY NOT INCLUDE FEDERAL FUNDS.—For purposes of this subsection, State matching contributions shall not be derived, directly or indirectly, from Federal funds, including any transfers from the Highway Trust Fund under section 9503.

''(l) UTILIZATION OF UPDATED CONSTRUCTION TECHNOLOGY FOR QUALIFIED PROJECTS.—For purposes of subsection (e)(4), the requirement of this subsection is met if the appropriate State agency relating to the qualified project has updated its accepted construction technologies to match a list prescribed by the Secretary of Transportation and in effect on the date of the approval of the project as a qualified project.

''(m) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BOND.—The term 'bond' includes any obligation.

''(2) TREATMENT OF CHANGES IN USE.—For purposes of subsection (e)(1)(A), the proceeds from the sale of an issue shall not be treated as used for a qualified project to the extent that the Build America Corporation takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall specify remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a Build America bond.

''(3) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

''(4) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any Build America bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

''(5) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

''(A) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a Build America bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

''(B) CERTAIN RULES TO APPLY.—In the case of a separation described in subparagraph (A), the rules of section 1286 shall apply to the Build America bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

''(6) REPORTING.—The Build America Corporation shall submit reports similar to the reports required under section 149(e).''.

(b) AMENDMENTS TO OTHER CODE SECTIONS.—

(1) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

''(8) REPORTING OF CREDIT ON BUILD AMERICA BONDS.—

''(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(d) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

''(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

''(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.''.

(2) TREATMENT FOR ESTIMATED TAX PURPOSES.—

(A) INDIVIDUAL.—Section 6654 (relating to failure by individual to pay estimated income tax) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULE FOR HOLDERS OF BUILD AMERICA BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a Build America bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(B) CORPORATE.—Subsection (g) of section 6655 (relating to failure by corporation to pay estimated income tax) is amended by adding at the end the following new paragraph:

''(5) SPECIAL RULE FOR HOLDERS OF BUILD AMERICA BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a Build America bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Subpart H. Nonrefundable Credit for Holders of Build America Bonds.''.

(2) Section 6401(b)(1) is amended by striking ''and G'' and inserting ''G, and H''.

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

SEC. 4. BUILD AMERICA CORPORATION.

(a) ESTABLISHMENT AND STATUS.—There is established a body corporate to be known as the ''Build America Corporation'' (hereafter in this section referred to as the ''Corporation''). The Corporation is not a department, agency, or instrumentality of the United States Government, and shall not be subject to title 31, United States Code.

(b) PRINCIPAL OFFICE; APPLICATION OF LAWS.—The principal office and place of business of the Corporation shall be in the District of Columbia, and, to the extent consistent with this section, the District of Columbia Business Corporation Act (D.C. Code 29–301 et seq.) shall apply.

(c) FUNCTIONS OF CORPORATION.—The Corporation shall—

(1) issue Build America bonds for the financing of qualified projects as required under section 54 of the Internal Revenue Code of 1986,

(2) establish an allocation plan as required under section 54(f)(2)(A) of such Code,

(3) establish and operate the Build America Trust Account as required under section 54(i) of such Code,

(4) perform any other function the sole purpose of which is to carry out the financing of qualified projects through Build America bonds, and

(5) not later than February 15 of each year submit a report to Congress—

(A) describing the activities of the Corporation for the preceding year, and

(B) specifying whether the amounts deposited and expected to be deposited in the Build America Trust Account are sufficient to fully repay at maturity the principal of any outstanding Build America bonds issued pursuant to such section 54.

(d) POWERS OF CORPORATION.—The Corporation—

(1) may sue and be sued, complain and defend, in its corporate name, in any court of competent jurisdiction,

(2) may adopt, alter, and use a seal, which shall be judicially noticed,

(3) may prescribe, amend, and repeal such rules and regulations as may be necessary for carrying out the functions of the Corporation,

(4) may make and perform such contracts and other agreements with any individual, corporation, or other private or public entity however designated and wherever situated, as may be necessary for carrying out the functions of the Corporation,

(5) may determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid,

(6) may, as necessary for carrying out the functions of the Corporation, employ and fix the compensation of employees and officers,

(7) may lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with such property (real, personal, or mixed) or any interest therein, wherever situated, as may be necessary for carrying out the functions of the Corporation,

(8) may accept gifts or donations of services or of property (real, personal, or mixed), tangible or intangible, in furtherance of the purposes of this Act, and

(9) shall have such other powers as maybe necessary and incident to carrying out this Act.

(e) NONPROFIT ENTITY; RESTRICTION ON USE OF MONEYS; CONFLICT OF INTERESTS; INDEPENDENT AUDITS.—

(1) NONPROFIT ENTITY.—The Corporation shall be a nonprofit corporation and shall have no capital stock.

(2) RESTRICTION.—No part of the Corporation's revenue, earnings, or other income or property shall inure to the benefit of any of its directors, officers, or employees, and such revenue, earnings, or other income or property shall only be used for carrying out the purposes of this Act.

(3) CONFLICT OF INTERESTS.—No director, officer, or employee of the Corporation shall in any manner, directly or indirectly participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is directly or indirectly interested.

(4) INDEPENDENT AUDITS.—An independent certified public accountant shall audit the financial statements of the Corporation each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be available to the public and shall be included in the report required under subsection (c)(5).

(f) TAX EXEMPTION.—The Corporation, including its franchise and income, is exempt from taxation imposed by the United States, by any territory or possession of the United States, or by any State, county, municipality, or local taxing authority.

(g) MANAGEMENT OF CORPORATION.—

(1) BOARD OF DIRECTORS; MEMBERSHIP; DESIGNATION OF CHAIRPERSON AND VICE CHAIRPERSON; APPOINTMENT CONSIDERATIONS; TERM; VACANCIES.—

(A) BOARD OF DIRECTORS.—The management of the Corporation shall be vested in a board of directors composed of 7 members appointed by the President, by and with the advice and consent of the Senate.

(B) CHAIRPERSON AND VICE CHAIRPERSON.—The President shall designate 1 member of the Board to serve as Chairperson of the Board and 1 member to serve as Vice Chairperson of the Board.

(C) INDIVIDUALS FROM PRIVATE LIFE.—Five members of the Board shall be appointed from private life.

(D) FEDERAL OFFICERS AND EMPLOYEES.—Two members of the Board shall be appointed from among officers and employees of agencies of the United States concerned with infrastructure development.

(E) APPOINTMENT CONSIDERATIONS.—All members of the Board shall be appointed on the basis of their understanding of and sensitivity to infrastructure development processes. Members of the Board shall be appointed so that not more than 4 members of the Board are members of any 1 political party.

(F) TERMS.—Members of the Board shall be appointed for terms of 3 years, except that of the members first appointed, as designated by the President at the time of their appointment, 2 shall be appointed for terms of 1 year and 2 shall be appointed for terms of 2 years.

(G) VACANCIES.—A member of the Board appointed to fill a vacancy occurring before the expiration of the term for which that member's predecessor was appointed shall be appointed only for the remainder of that term. Upon the expiration of a member's term, the member shall continue to serve until a successor is appointed and is qualified.

(2) COMPENSATION, ACTUAL, NECESSARY, AND TRANSPORTATION EXPENSES.—Members of the Board shall serve without additional compensation, but may be reimbursed for actual and necessary expenses not exceeding $100 per day, and for transportation expenses, while engaged in their duties on behalf of the Corporation.

(3) QUORUM.—A majority of the Board shall constitute a quorum.

(4) PRESIDENT OF CORPORATION.—The Board of Directors shall appoint a president of the Corporation on such terms as the Board may determine.

By Mr. BINGAMAN (for himself, Mr. BAUCUS, Mr. ROCKEFELLER, Mr. DASCHLE, Mrs. MURRAY, Ms. CANTWELL, Mr. DAYTON, Mr. LIEBERMAN, Mrs. LINCOLN, and Mrs. FEINSTEIN):

S. 1110. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance for communities, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Trade Adjustment Assistance for Communities Act of 2003. This legislation is co-sponsored by Senators BAUCUS, ROCKEFELLER, DASCHLE, MURRAY, CANTWELL, DAYTON, LIEBERMAN, LINCOLN, and FEINSTEIN.

Companion legislation will be introduced in the House by Congressman SANDER LEVIN tomorrow.

I first introduced Trade Adjustment Assistance legislation in the last Congress, and I was very pleased when that legislation—the provisions relating to both individuals and communities—passed the Senate as part of the Trade Act of 2002. I would like to take this opportunity to thank all of my colleagues for their efforts in making this happen. But I would like to thank Senator BAUCUS in particular for making Trade Adjustment Assistance one of his priorities last session and pushing on it to the very end. And I would also like to thank Senator GRASSLEY for understanding the importance of Trade Adjustment Assistance to the ongoing trade debate, and his decision to make it part of the trade package that went through Congress.

But I also have to express my disappointment with the way the process ended. In spite of the bi-partisan consensus that formed around Trade Adjustment Assistance during the negotiations last year and the efforts of my colleagues, I regret to say that the provisions related to communities did not make it out of conference. I can not tell you why this happened. However, I can tell you that it is incredibly naive to ignore the problems that are occurring right now across the country and not understand what it means for our country's long-term economic interests. Look at the newspaper and you will see that in many communities, people are pretty much out of work for good, at least when you look at the jobs they had and the wages they were making. And as the lay-offs have expanded, the impact the lay-offs have had on entire communities have become more pronounced. Now it is not just the individuals who are struggling, but the communities in which hundreds or thousands of people live, all because a company or a group of companies have closed their doors for good.

From what I can tell from statements some of my colleagues have made in committee or on the floor of the Senate, this is really nothing more than tough luck. This is the way markets work and you simply make do with what you have. I disagree completely. From where I sit you can't just let individuals who have worked their whole life at a company, who have played by the rules for their entire life, who have committed their entire life to keeping their communities intact, be reduced to little more than hope that something will change for the better. They deserve more than that. You also can't let the communities where these people live just die, because they form the foundation of what we are as a society. These are the networks that have lasted generations, that connect us, and define who we are. I firmly believe we need to do everything we can for these folks and the communities where they live, simply because we owe them something for what they have given us and our country. I believe we have a responsibility to give these communities a shot at a new future. The legislation I am introducing today does just that.

Let me make it clear that writing this legislation is not an abstract exercise. For me, this is about my friends and neighbors that I have known for years. Right now, in my hometown of Silver City, NM, I have folks that I grew up with, wondering what they are going to do next.

Over the last few years the copper mines closed, and then the businesses that supported the copper mines closed, and then the tax base began to disappear, and then services started to be cut, and it seems to everyone like the whole community has been caught in a downward spiral. In spite of what some of my colleagues might claim, this is not because of lack of effort on the part of the people of Silver City. These people are not content with the way things are. On the contrary, they are trying desperately to change direction. They have ideas about where they want to go and what they need to do to make things better. They have acted on these ideas to the best of their ability. And I want to commend them for that. But right now they are stuck because there is no money available to get things started, to take the first step so other steps can be taken afterward.

And this is the way it is across the country in a good many communities just like Silver City. I strongly believe this has to change. We have let things stand just the way they are for far too long. The status quo is not acceptable, and it is time for Congress to make a serious effort to change how we manage these kinds of problems.

My interest in Trade Adjustment Assistance actually began in November, 1997 when Levi-Strauss announced its decision to close most of its plants in the United States and transfer production to other countries. Levi-Strauss decided to close two plants in New Mexico one in Albuquerque and one in Roswell—with the Roswell facility alone losing close to 600 workers. This number didn't even include the contract workers and other folks that relied on Levi Strauss for their living. They lost their jobs as well. 600 plus individuals would be a significant blow in any town, but in a town of 50,000 people—which is what Roswell—is with a workforce of only 25,000 people, this lay-off was truly devastating. What exactly were these people going to do? Where could they go to get work so they could pay their mortgage, pay for health care, pay for their kids' education? Sure, some of them could be retrained through Trade Adjustment Assistance, but the question that was on everyone's mind was: retrained for what? What do you re-train 600 people for when there are no other jobs available in town, and no new companies coming into town?

The questions surrounding what happened in Roswell—actually, what should have happened in Roswell if we had more effective Trade Adjustment Assistance policies in place—combined with other plant closures across the country in towns just like Roswell, made me ask what actually could be done to help individuals and communities adapt to this kind of collective crisis. In cooperation with Senators Roth and Moynihan, who were the Chair and Ranking Member of the Finance Committee at the time, I requested studies from the General Accounting Office on the over-all efficacy of Trade Adjustment Assistance program. I also asked them to study how communities across the country had responded to the changes that derive from international trade agreements and globalization.

I have to say that the answers we got back from the General Accounting Office were not very encouraging. To begin with, the Trade Adjustment Assistance for individuals program suffered from inconsistencies, incoherence, and a general lack of accountability. Some states managed their programs well, but others—my home State of New Mexico being one—did not. There was no Trade Adjustment Assistance for Communities program at the time, but in analyzing how particular communities responded to economic crises, the General Accounting Office report clearly stated that government funds available for economic recovery efforts were limited and the road to real recovery was difficult even when funds were available. There were no ''best practices'', no obvious answers, to refer to because success had been so limited. In most cases, there was no way out of the downward spiral at all.

But over time some individual lessons appeared, and interestingly enough, those lessons were very similar to the ones we learned in Roswell. Among other things, technical assistance is needed early on in the process to ensure that a community-wide recovery strategy can be developed. Funding needs to be made available to assist in strategic planning. Individual and institutional differences need to be bridged in the community so there is a tangible collective interest in the strategic plan. Short-term, medium-term, and long-term funding needs to be available for communities to use as they pursue their economic strategy. U.S. government agencies need to cooperate to ensure that their efforts are not duplicative or contradictory. State governments need to be involved in the recovery process to encourage cooperation where there has been none before.

I admit that it is very difficult to make sure all these things happen, especially in communities that are struggling to stay on an even keel. Clearly much of the burden for the activities fall on communities, because they are the ones that have to decide what is best for them. And that is the way it should be. But Congress can play a role in helping communities attain the

goals they have set for themselves, and I believe the bill I am introducing today offers a very good start. The key components of the legislation are as follows: First, the legislation establishes a Trade Adjustment Assistance for Communities Program at the Department of Commerce, signaling that communities that are negatively impacted by trade are deserving of a separate stream of funds to help them through their economic crisis. Ideally this program will be located at the Economic Development Administration, which has the expertise and experience to manage a program of this type.

Second, the legislation establishes a U.S. government inter-agency Trade Adjustment Assistance for Communities working group, the goal being to ensure that agencies work in cooperation to assist communities negatively impacted by trade, integrating personnel, activities, and resources as they respond to existing or anticipated problems.

Third, the legislation provides funding for strategic planning and development grants for communities negatively impacted by trade. As written, there is no limit on the funds that a community can receive. Instead, the level of funding is determined by the individual needs of each community, the coherence of their strategic plan, and the cooperation that exists among the stakeholders applying for the grant.

Fourth, the legislation allows funding from programs at other agencies to be used in concurrence with Trade Adjustment Assistance for Communities funding, and, furthermore, allows Federal funding to be used to fulfill most non-Federal matching requirements that exist. In the past, some economic development efforts have been stopped in their tracks because communities don't have the matching funds necessary to get grants. This legislation would give communities that are now suffering under serious financial constraints some initial flexibility in their effort to get funding.

Fifth, the legislation gives preference to rural communities in funding guidelines, since these are the communities that have the fewest options available to them as they attempt to respond to trade related problems.

Sixth, the legislation authorizes $350 million per year for the Trade Adjustment Assistance for Communities program, essentially doubling the funds that are currently available for economic adjustment in the United States. I believe this amount is consistent with the needs that we see of communities across the United States.

Seventh, the legislation establishes a lookback to January 1998, allowing communities that were negatively impacted by trade and have yet to overcome their problems an opportunity to obtain funds and begin their recovery.

Finally, the legislation establishes a set of new triggers for eligibility that are designed to help not only communities that have been negatively impacted by trade, but also communities that have experienced some negative impacts but want to set a new course so any future impacts will be limited. This approach is far different than anything that has been done before in Trade Adjustment Assistance legislation—far different even than the legislation that my colleagues and I introduced last year—and is designed specifically to avoid the criticism that Trade Adjustment Assistance is really nothing but ''death insurance''.

The inclusion of the category of ''affected domestic producers'' as a trigger, for example, would allow certain companies to work with their communities to create a coherent strategic plan to renovate or construct basic or advanced infrastructure, diversify the local economy, attract new investment, and encourage long-term economic stability and global competitiveness—all this before a company is closed and the entire community is affected. The inclusion of TAA for firms as a trigger would allow restructuring at a firm to occur in tandem with restructuring in a community. The inclusion of TAA for workers as a trigger would allow funds to be directed into a community at the initial onset of problems at a company—at the moment when lay-offs are first occurring—not when the problems are so far down the line that there is very little that can be done about it.

Let me say straight out that this legislation cannot be considered a substitute for a strong trade or manufacturing policy. But I do believe this legislation is complementary to those policies. From where I sit, there will always be individuals and communities negatively impacted by trade, and it is incumbent upon Congress to ensure that these individuals and communities are treated with the respect they deserve and with the strategic economic interests of our country in mind. The economic ideology that suggests we just let things take their course and things will work out the way they are supposed to is, from my perspective, wrongheaded and misguided. The fact is we must look very carefully at the changes that are occurring to our national economy as a result of globalization and position ourselves to do better than we are now.

This legislation carves out an area of real need and addresses it in a coherent, comprehensive, and innovative fashion. If enacted, it will have an immediate, concrete, and important impact on communities across the country. Every State in the country would benefit from the legislation. It will allow communities to take charge of the future and contribute to the economic welfare of the Nation. It is a practical approach that is designed to keep our communities intact and our country competitive and strong. I urge my colleagues to support it.

Mr. BAUCUS. Mr. President, I rise today in support of the Trade Adjustment Assistance for Communities Act of 2003.

I want to commend Senator BINGAMAN for introducing this bill today. He has been a strong advocate of Trade Adjustment Assistance and a strong voice for communities that need a helping hand facing the challenges of the global economy.

Trade and trade-opening policies create benefits for our country. But that fact should not keep us from acknowledging that the benefits of trade are seldom evenly distributed. In fact, there can be losers from trade, even when the economy as a whole is better off.

In 1962, President Kennedy said that ''those injured by . . . trade competition should not be required to bear the full brunt of the impact.'' ''There is an obligation,'' he said, for the Federal Government ''to render assistance to those who suffer as a result of national trade policy.''

That year, President Kennedy and a bipartisan majority of Congress created Trade Adjustment Assistance—a program designed to help those who are displaced by trade policy to retrain and get back on their feet.

Last year, with help of another bipartisan majority of Congress, we passed the Trade Adjustment Assistance Reform Act of 2002—a historic expansion of the TAA program.

The Trade Adjustment Assistance for Communities Act continues to build on this important tradition by creating a new TAA program for communities.

In a recent study, the General Accounting Office found that, even with TAA benefits available to displaced workers, the loss of a major employer can have ripple effects on the local economy.

In addition to the direct job losses, local economies can experience reduced tax revenues, reduced sales by the closed plant's supplier firms and by local retailers, and rising social services costs. Until they can attract well-paying new jobs, these communities can face extended periods of economic distress.

This is especially true in smaller and rural communities, such as we have in Montana. These communities may not have a lot of job opportunities for displaced workers, even with TAA retraining. Indeed, one of the main criticisms of the current TAS program has been that it does nothing to make sure there are jobs for workers at the end of the retraining process.

There are a number of Federal programs out there that might offer some help. They are all over the map—in Commerce, Treasury, Labor, Agriculture, HUD and the SBA, just to name a few. But these communities have no way to start, no go-to person or resource to guide them through this maze of potential help. And the Federal Government doesn't make it any easier. There is very little coordination of response among the various agencies. Finally, even if communities can find

these Federal resources, most existing programs are not tailored to the special needs of trade-impacted communities.

This bill tries to make Federal economic assistance work better for trade-impacted distressed communities in a few simple ways.

It creates a single office responsible for coordinating the Federal response.

It creates a simple trigger process to identify potentially eligible communities and bring appropriate resources to their attention.

It gives communities the technical assistance they need to develop a strategic plan—basically a roadmap for economic recovery. That helps ensure that Federal resources are being used in the most coordinated and cost-effective way possible.

Finally, it makes sure that there are expertise and resources tailored to the special needs of trade-impacted communities.

I am pleased to be a cosponsor of this bill. I hope we will be able to consider it in the Finance Committee this year.

By Mrs. FEINSTEIN:

S. 1111. A bill to provide suitable grazing arrangements on National Forest System land to persons that hold a grazing permit adversely affected by the standards and guidelines contained in the Record of Decision of the Sierra Nevada Forest Plan Amendment and pertaining to the Willow Flycatcher and the Yosemite Toad; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce a bill to prevent unnecessary hardship for ranching families in the Sierra Nevada Mountains.

This summer, restrictions imposed for the Yosemite Toad and willow flycatcher will force about fifteen to thirty ranchers off the land that they have long used for grazing.

This bill requires the Forest Service to explore all the options available to avoid this outcome. For example, the bill makes it easier for the Forest Service to offer ranchers suitable alternative grazing land.

Besides alternative grazing arrangements, the Forest Service should look at fencing, active management of the cattle, and other options. If none of these alternatives are feasible, the bill provides relief for the most seriously affected ranchers.

The bill would allow ranchers to keep using 15 parcels of land during this calendar year where Yosemite Toad and willow flycatcher restrictions would otherwise make grazing unworkable. For many other ranches, where grazing and the species could coexist with some adjustments, environmental protections would fully remain in place.

I urge the Forest Service to quickly devise a long-term strategy to promote the coexistence of ranchers and the species. The Forest Service should work proactively with the Fish and Wildlife Service to establish a conservation plan for the species—with the goal of avoiding the need for any listing of it.

I believe that if the regulatory agencies collect better information on the Yosemite Toad and the willow flycatcher, we can find ways to protect the species without completely shutting down long-term ranching operations. I am committed to expediting these long-term solutions.

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

S. 1112. A bill to amend title 38, United States Code, to permit Department of Veterans Affairs pharmacies to dispense medications on prescriptions written by private practitioners to veterans who are currently awaiting their first appointment with the Department for medical care, and for other purposes; to the Committee on Veterans' Affairs.

Mr. KERRY. Mr. President, there are now nearly 200,000 American veterans today who are forced to wait at least 6 months for their first visit with a Department of Veterans Affairs physician. Despite having served their country and been promised health benefits, these veterans are receiving deferred and rationed health care because of chronic underfunding and bureaucratic red tape. It amounts to a broken promise with men and women who have served in our armed forces. To help ensure that our veterans receive the care they need and have been guaranteed, today I am pleased to introduce the Veterans' Prescription Drug Reform Act of 2003.

Veterans enrolled in the VA health care program are entitled to a prescription drug benefit. This is an essential benefit given the importance of pharmaceuticals in health care today. However, there's a bureaucratic catch: the benefit only applies to prescriptions written by a VA physician, and there are nearly 200,000 veterans who now wait 6 months or longer for their first visit with a VA physician. For those veterans in need of medicine and waiting months on end to see a VA physician, the benefit has little value.

The VA has reported to Congress that, while it has no exact figure, it estimates that tens of thousands of the veterans now on the waiting list are there primarily to access their prescription drug benefit. In many of these cases, veterans have already seen a private physician and have a prescription. But in order to use the VA pharmacy and receive their prescription benefit, these individuals must duplicate their health care visits and see a VA physician. This delays health care benefits for far too many veterans.

The Veterans' Prescription Drug Reform Act of 2003 would permit veterans already on the waiting list to fill a prescription written by a private physician at the VA pharmacy.

Specifically, the Veterans' Prescription Drug Reform Act of 2003 would give the Secretary of Veterans Affairs the authority to permit veterans on the waiting list for their first appointment with a VA physician at the date of enactment to use the VA pharmacy to fill prescriptions written by a private physician. It would also preserve the core healthcare mission of the VA by limiting this initiative only to those currently waiting for their first appointment. The proposal calls for a report to Congress in 1 year so that its potential expansion can be evaluated.

The Secretary of Veterans Affairs has told Congress that he would support such a proposal, and I look forward to working with Senator HARKIN, who joins me in sponsoring this legislation, and my other colleagues in the Senate on this common-sense approach to reducing the lengthy wait-lines for veterans' healthcare.

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. 1112

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 ''Veterans' Prescription Drug Reform Act of 2003''.

SEC. 2. AUTHORITY OF DEPARTMENT OF VETERANS AFFAIRS PHARMACIES TO DISPENSE MEDICATIONS TO CERTAIN VETERANS FOR PRESCRIPTIONS WRITTEN BY PRIVATE PRACTITIONERS.

(a) AUTHORITY TO DISPENSE MEDICATIONS TO CERTAIN VETERANS.—Section 1712 of title 38, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

''(e)(1) The Secretary may authorize the pharmacies of the Department to dispense medications to a veteran described in paragraph (2) pursuant to a valid prescription of the veteran written by a private practitioner.

''(2) A veteran described in this paragraph is any veteran who is on a waiting list for such veteran's first appointment with the Department for medical services as of the date of the enactment of this section.

''(3) A veteran dispensed a medication under this subsection shall pay the Secretary an amount for such medication determined in accordance with the provisions of section 1722A(a) of this title.

''(4) Any amounts paid under paragraph (3) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund.''.

(b) DEPOSIT OF COLLECTIONS.—Section 1729A(b) of such title is amended—

(1) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively; and

(2) by inserting after paragraph (3) the following new paragraph (4):

''(4) Section 1712(e) of this title.''.

(c) REPORT.—(1) Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the exercise by the Secretary of the authority provided in subsection (e) of section 1712 of title 38, United

States Code (as amended by subsection (a) of this section).

(2) The report shall include—

(A) a description of the exercise of the authority by the Secretary; and

(B) such recommendations for additional legislative or administrative action with respect to the authority as the Secretary considers appropriate in light of the exercise of the authority.

By Mrs. MURRAY (for herself, Mr. DAYTON, Ms. CANTWELL, Mr. BAUCUS, Mr. LEAHY, Mrs. BOXER, and Mr. JEFFORDS):

S. 1115. A bill to amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products; to the Committee on Environment and Public Works.

Mrs. MURRAY. Mr. President, today I rise to introduce legislation to do what should have been done decades ago: fully ban asbestos in the United States. I am introducing the Ban Asbestos in America Act of 2003 to prohibit this known carcinogen from being used to manufacture products in this country. The bill also bans imports of asbestos products from other countries where asbestos is still legal. I am pleased that Senators BAUCUS, BOXER, CANTWELL, DAYTON, JEFFORDS and LEAHY are original cosponsors of this important legislation.

The primary purpose of the Ban Asbestos in America Act of 2003 is to require the Environmental Protection Agency, EPA, to ban the substance within two years. Most people think that asbestos has already been banned. In fact, in 1989 EPA finalized regulations to phase out and ban the substance by 1997. But in 1991, the 5th Circuit Court of Appeals overturned EPA's ban, arguing that EPA did not ''first evaluate and then reject the less burdensome alternatives'' under the Toxic Substances Control Act. Unfortunately, the first Bush Administration did not appeal the decision to the Supreme Court. While new uses of asbestos were banned, existing ones were not.

As a result, it is still legal in 2003 to construct buildings in the United States with asbestos cement shingles and to treat them with asbestos roof coatings. It is still legal to construct new water systems using asbestos cement pipes imported from other countries. It is still legal for cars and trucks to be made and serviced with asbestos brake pads and clutch facings.

Asbestos is still not banned, and as a result, we're still using it. According to the U.S. Geological Survey, in 2001, businesses in this country consumed 26 million pounds of chrysotile asbestos to make roofing products, gaskets, friction materials and other products. Last month, my staff walked into a local home improvement store and bought off the shelf roofing sealants made with asbestos. In addition, we are still importing asbestos products from other countries, many of which have less stringent environmental and public health standards.

Everyone knows that asbestos is harmful. The term asbestos, like arsenic, lead, mercury or DDT, is synonymous with poison. Asbestos may well be the most regulated toxic substance that federal and state agencies have ever dealt with. At least eleven different Federal statutes address asbestos. The EPA, Occupational Safety and Health Administration, OSHA, Mine Safety and Health Administration and Consumer Product Safety Commission are only some of the Federal agencies tasked with implementing rules to protect workers and consumers from the dangers of this substance.

But the sheer volume of rules and regulations in place does not guarantee that public health and the environment are being adequately protected. We have significant evidence suggesting that because asbestos is still not banned, we're still not safe from its dangers. I'd like to highlight some of this evidence for my colleagues.

First, workers in this country are still being exposed to dangerous levels of asbestos. According to OSHA, ''An estimated 1.3 million employees in construction and general industry face significant asbestos exposure on the job. Heaviest exposures occur in the construction industry, particularly during the removal of asbestos during renovation or demolition. Employees are also likely to be exposed during the manufacture of asbestos products, such as textiles, friction products, insulation, and other building materials, and during automotive brake and clutch repair work.''

It is important to remember that there is no known safe threshold level of asbestos exposure. OSHA's permissible exposure limit of 0.1 fibers per cubic centimeter is based on technical measurement limitations. OSHA's limit assumes that workers exposed to this concentration have a lifetime exposure risk of 3 to 5 in 1,000 for cancer and 2 in 1,000 for asbestosis. This is a very high risk compared to the cancer risk levels that are considered acceptable for some environmental cleanups.

The extent to which workers are exposed to dangerous levels of asbestos is especially troublesome when one considers the frequency with which OSHA's standards are violated. On July 31, 2001, I chaired a Senate Health, Education, Labor and Pensions hearing on asbestos and workplace safety. At the hearing I learned from OSHA that since 1995, the agency had cited employers for violations of its asbestos standards 15,691 times. This is astounding given the known dangers of asbestos and the high risks of disease even when OSHA's exposure limit is being met.

As follow-up to the hearing, I asked OSHA to provide more information about asbestos-related violations. In an October 17, 2001 letter to me, Mr. John Henshaw, Assistant Secretary for Occupational Safety and Health, wrote that between fiscal year 1996 and fiscal year 2001, OSHA conducted a total of 190,971 inspections generating a total of 427,786 violations. Of these, 3,000 inspections and 15,691 violations involved asbestos. According to Mr. Henshaw, about 2 percent of inspections and 4 percent of violations were asbestos-related. In his letter to me, Mr. Henshaw wrote, ''OSHA does not consider any level to be an acceptable noncompliance level. We strive for 100 percent compliance.'' Despite OSHA's best intentions, workers are still being exposed to dangerous levels of asbestos.

It is also important to consider that the vast majority of workplaces where asbestos exposure occurs, such as construction jobs and auto repair shops, are not regularly inspected by OSHA. The Administration conducts inspections only in response to complaints or as a result of referrals from law enforcement or the media. Many more violations of the standard occur in the real world than are actually recorded by regulators. Many employees likely do not contact OSHA about potential asbestos exposure on the job because they think asbestos has been banned long ago and is no longer a problem.

But asbestos in the workplace is clearly still a problem. Recent news investigations provide more evidence that workers are being exposed to dangerous levels of this mineral. According to an article in the Seattle Post-Intelligencer on November 16, 2000, ''During the past three months, the P-I collected samples of dust from floors, work areas and tool bins in 31 brake-repair garages in Baltimore, Boston, Chicago, Denver, Richmond, Seattle, and Washington, D.C. Asbestos, almost exclusively chrysotile, which has been used for decades in brakes, was detected in 21 of the locations. The amount of asbestos in the dust ranged from 2.26 percent to 63.8 percent.''

When dust with these concentrations of asbestos in them is disturbed, airborne concentrations of asbestos occur that are well above OSHA's permissible exposure limit of 0.1 fiber per cubic centimeter. Under current OSHA regulations, if airborne asbestos concentrations exceed this level, employers must conduct air monitoring, take measures to reduce asbestos emissions, post warning signs and record concentrations of airborne asbestos. Workers are supposed to wear respirators and protective clothing and are required to undergo long term medical monitoring.

Now I recognize that much of the exposure to asbestos in the workplace comes from asbestos products installed years, and in many cases, decades ago. By one estimate, about 30 million tons of asbestos was used in this country between 1900 and 1980. Asbestos in place, in our buildings, schools and homes, will be with us for decades to come.

But given the known dangers of this mineral, why are we still using it? Why are we still adding it to products on purpose when there are perfectly acceptable substitutes? In retrospect, it is tragic that asbestos was so widely used during the 20th century, for the

economic and public health impacts have been disastrous. One very important step in overcoming the problems caused by asbestos is to stop adding to the problem—however incrementally—by continuing to use this dangerous mineral in products on purpose.

I'd like to point out some additional evidence supporting the need to ban asbestos in the United States and to raise awareness about this issue. Most of my colleagues are familiar with the tragedy in Libby, MT, where hundreds of workers and their families suffer from asbestos-related diseases caused by exposure to asbestos-tainted vermiculite.

For decades, the W.R. Grace mine in Libby supplied about 80 percent of the vermiculite used in this country. W.R. Grace very successfully marketed its product, without any warning labels, even though the company was well aware its product was contaminated with this known carcinogen. Asbestos-contaminated ore was shipped to more than 300 sites around the country for processing and use in industrial and consumer products. According to the EPA, 14 of these sites are so contaminated with asbestos that they still need to be cleaned up, even though the Libby mine closed in 1990. While this is a problem that came from a small mining town in Montana, the ramifications and consequences are clearly national in scope.

In addition, vermiculite from Libby is still around and is still a threat to public health. It is estimated that tens of millions of homes, schools and businesses contain insulation made with Libby vermiculite, known as Zonolite. A recent study conducted for EPA, entitled Asbestos Exposure Assessment for Vermiculite Attic Insulation, found that Zonolite in homes today contains up to 2 percent asbestos. This study included tests on Zonolite insulation from Seattle Public Utilities and from a home in Washington State. It found that when this insulation was disturbed, airborne concentrations of 3.3 asbestos fibers per cubic centimeters were measured. In other words, handling Zonolite asbestos can cause levels of asbestos in the air that significantly exceed OSHA's exposure limit for workers. Even more troubling, perhaps, the study found ''vermiculite that tests non-detect for asbestos by bulk analysis can still generate airborne asbestos concentrations when disturbed.'' When vermiculite without significant amounts of asbestos in bulk was disturbed, concentrations of asbestos in the air up to 0.5 fibers per cubic centimeters were detected. This means that even vermiculite with only trace amounts of asbestos in bulk can generate unhealthy concentrations of asbestos in the air.

Yesterday EPA launched a national consumer education campaign warning people not to disturb Zonolite attic insulation if they have it in their homes. The agency also warned people not to let their children play in attics with vermiculite for fear of asbestos exposure. EPA has developed a consumer education brochure and has created an asbestos hotline for people to call for more information. The Agency for Toxic Substances and Disease Registry and National Institute for Occupational Safety and Health have joined EPA in this education effort by creating materials to educate consumers and workers about the dangers of asbestos-contaminated vermiculite.

While we need to ensure that we are no longer adding asbestos to our products on purpose, we also need to ensure that asbestos in harmful concentrations isn't ending up in our consumer products by accident. I am glad EPA, ATSDR and NIOSH are now proactively reaching out to consumers and workers to warn them to stay away from vermiculite attic insulation. This is an important first step in dealing with just one aspect of the legacy created by W.R. Grace in Libby.

There is another important reason to ban asbestos that I would like to share with my colleagues. As I mentioned previously, the United States is still importing products that contain asbestos. Unfortunately, we do not have precise statistics on which products coming into this country contain the deadly mineral. The Department of Commerce's import database does not distinguish between asbestos-containing products and products containing asbestos substitutes. According to the U.S. International Trade Commission, in 2002 this country imported more than 44,000 tons of asbestos-cement products, some of which may have contained cellulose instead of asbestos.

With increased globalization and international trade, U.S. imports of asbestos containing consumer and industrial products will continue to rise—unless we prohibit these products from crossing our borders in the first place.

Although we do not have accurate numbers for the extent to which asbestos products are flowing across our borders, we do know that asbestos is being heavily marketed to developing countries. According to an August 2, 1999 USA Today article, ''As asbestos demand has plummeted in the industrialized world the past 25 years, it has soared in many developing nations and formerly communist countries. Its use in these countries is largely unregulated, haphazard and deadly.''

A more recent editorial in the Canadian Medical Association Journal compares the asbestos industry to the tobacco industry. The February 20, 2001 article by Doctors Joseph LaDou, Philip Landrigan, John C. Bailar III, Vito Foa and Arthur Frank reads:

''The commercial tactics of the asbestos industry are very similar to those of the tobacco industry. In the absence of international sanctions, losses resulting from reduced cigarette consumption in the developed countries are offset by heavy selling to developing nations. In a similar fashion, the developed world has responded to the asbestos health catastrophe with a progressive ban on the use of asbestos. In response, the asbestos industry is progressively transferring its commercial activities and the health hazards to the developing countries.''

Banning asbestos in the United States sends an important message to the rest of the world. The asbestos industry will no longer be able to justify its marketing to developing countries by pointing out that asbestos is still legal in the U.S., and therefore, it must be safe. More than 30 countries have already banned asbestos, and it is time for this country to follow suit. It is our moral responsibility as the world's strongest economy, the most powerful Nation and a leader in environmental protection and public health to ban this harmful substance.

That is why today I am introducing the Ban Asbestos in America Act. The legislation has five main parts. First, this bill protects public health by doing what the EPA tried to do 14 years ago: ban asbestos in the United States. The legislation requires EPA to ban it within two years of passage of the Act. As under the regulations EPA finalized in 1989, companies may file for an exemption to the ban if there is no substitute material available.

Second, the bill requires EPA to convene a Blue Ribbon Panel on asbestos policy and to have the National Academy of Sciences conduct an asbestos study. In response to the 2001 EPA Inspector General's report on Libby, Montana, the EPA promised to convene a Blue Ribbon Panel on asbestos and non-regulated fibers. But instead of convening a high level panel, EPA hired a non-profit organization, the Global Environment and Technology Foundation, to develop an asbestos policies focus group. Just yesterday EPA released GETF's Asbestos Strategies Report. I am very pleased that the Report recommends several aspects of the Ban Asbestos in America Act, including that Congress pass legislation to ban asbestos.

While the recommendations are certainly helpful in providing guidance to EPA, Congress and other federal agencies on the next steps to address asbestos, the GETF report does not replace a full fledged Blue Ribbon Panel. The Ban Asbestos in America Act codifies creation of a Blue Ribbon Panel as EPA first committed to in 2001. The panel will include participation from the Department of Labor and the Consumer Product Safety Commission. It will review the current laws and rules in place to protect workers and consumers, and make recommendations for improving protections within 2 years of passage of the Act.

In addition, the bill calls for EPA to have the NAS conduct a study on the current state of the science relating to the human health effects of exposure to asbestos and other durable fibers. The NAS study shall also include recommendations for a uniform system of asbestos exposure standards and for a uniform system to create protocols to

detect and measure asbestos. As I mentioned previously, asbestos is regulated under multiple statutes. There are different standards within EPA and across Federal agencies, and agencies rely on different protocols to identify the substance. The NAS shall be required to submit the study to EPA, other federal agencies and Congress within 18 months of passage of the Act.

Third, the legislation requires a survey to determine which products contain asbestos, either on purpose or as a contaminant. EPA will be required to conduct this review with input from the Department of Labor, the Consumer Product Safety Commission and the International Trade Commission.

The bill directs the EPA to conduct a survey on the status of asbestos-containing products, such as roofing materials, brake pads and gaskets, which contain asbestos on purpose. EPA must also study contaminant-asbestos products, such as some insulation and horticultural products, which contain asbestos as a contaminant of another substance. The study will examine how people use these products and the extent to which people are exposed to harmful levels of asbestos. The study must be finalized within 18 months to inform the Blue Ribbon Panel and the education campaign.

Fourth, based on the results of the study, EPA shall conduct a public education campaign to increase awareness of the dangers posed by asbestos-containing products and contaminant-asbestos products, including those in homes and workplaces. The agency shall give priority to those products posing the greatest risk, as determined by the study required by the bill. The education campaign must be conducted within 2 years of passage of the bill.

EPA and the Consumer Product Safety Commission shall still be required to conduct a national education campaign about vermiculite insulation within 6 months of passage of the Act. As many as 35 million homes and businesses may contain asbestos-contaminated insulation made with vermiculite from Libby. This requirement is still in the bill despite EPA's recent announcement of an education campaign about vermiculite attic insulation. This will ensure EPA's long-term commitment to educating the public.

Finally, the Ban Asbestos in America Act increases the federal commitment to finding new treatments for the terrible diseases caused by asbestos. At least 2,000 people per year die from mesothelioma, a deadly cancer of the lining of the lungs and internal organs caused by exposure to asbestos. The legislation would direct the head of NIH to ''expand, intensify and coordinate programs for the conduct and support of research on diseases caused by exposure to asbestos.'' The Centers for Disease Control would be required to create a National Mesothelioma Registry to improve tracking of the disease, which in many cases goes undiagnosed and thus unrecorded. In addition, the bill creates 10 mesothelioma treatment centers around the country to improve treatments for and awareness of this fatal cancer.

Our hope is that by continuing to work together, we will build support for the Ban Asbestos in America Act. If we can get this legislation passed, fewer people will be exposed to asbestos, fewer people will contract asbestos diseases in the first place, and those who already have asbestos diseases will receive treatments to prolong and improve quality of life. I urge my colleagues to support this important legislation.

In the meantime, we should do all we can to ensure that the rules in place to protect workers, consumers and schoolchildren from asbestos are followed and are strengthened if necessary. We also need to make sure that Federal agencies are given adequate resources to fully implement Congress' many mandates.

I ask unanimous consent that the text of the Ban Asbestos in America Act of 2003 be printed in the RECORD.

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

S. 1115

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 ''Ban Asbestos in America Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Administrator of the Environmental Protection Agency has classified asbestos as a category A human carcinogen, the highest cancer hazard classification for a substance;

(2) there is no known safe level of exposure to asbestos;

(3)(A) in hearings before Congress in the early 1970s, the example of asbestos was used to justify the need for comprehensive legislation on toxic substances; and

(B) in 1976, Congress passed the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(4) in 1989, the Administrator promulgated final regulations under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) to phase out asbestos in consumer products by 1997;

(5) in 1991, the United States Court of Appeals for the 5th Circuit overturned portions of the regulations, and the Government did not appeal the decision to the Supreme Court;

(6) as a result, while new applications for asbestos were banned, asbestos is still being used in some consumer and industrial products in the United States;

(7) the United States Geological Survey has determined that in 2000, companies in the United States consumed 15,000 metric tons of chrysotile asbestos, of which approximately 62 percent was consumed in roofing products, 22 percent in gaskets, 12 percent in friction products, and 4 percent in other products;

(8) available evidence suggests that—

(A) imports of some types of asbestos-containing products may be increasing; and

(B) some of those products are imported from foreign countries in which asbestos is poorly regulated;

(9) many people in the United States incorrectly believe that—

(A) asbestos has been banned in the United States; and

(B) there is no risk of exposure to asbestos through the use of new commercial products;

(10) the Department of Commerce estimates that in 2000, the United States imported 51,483 metric tons of asbestos-cement products;

(11) banning asbestos from being used in or imported into the United States will provide certainty to manufacturers, builders, environmental remediation firms, workers, and consumers that after a specific date, asbestos will not be added to new construction and manufacturing materials used in this country;

(12) asbestos has been banned in Argentina, Australia, Austria, Belgium, Chile, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Norway, Poland, Saudi Arabia, the Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom;

(13) asbestos will be banned throughout the European Union in 2005;

(14) in 2000, the World Trade Organization upheld the right of France to ban asbestos, with the United States Trade Representative filing a brief in support of the right of France to ban asbestos;

(15) the 1999 brief by the United States Trade Representative stated, ''In the view of the United States, chrysotile asbestos is a toxic material that presents a serious risk to human health.'';

(16) people in the United States have been exposed to harmful levels of asbestos as a contaminant of other minerals;

(17) in the town of Libby, Montana, workers and residents have been exposed to dangerous levels of asbestos for generations because of mining operations at the W.R. Grace vermiculite mine located in that town;

(18) the Agency for Toxic Substances and Disease Registry found that over a 20-year period, ''mortality in Libby resulting from asbestosis was approximately 40 to 80 times higher than expected. Mesothelioma mortality was also elevated.'';

(19)(A) in response to this crisis, in January 2002, the Governor of Montana requested that the Administrator of the Environmental Protection Agency designate Libby as a Superfund site; and

(B) on October 23, 2002, the Administrator placed Libby on the National Priorities List;

(20)(A) vermiculite from Libby was shipped for processing to 42 States; and

(B) Federal agencies are investigating potential harmful exposures to asbestos-contaminated vermiculite at sites throughout the United States;

(21) the Administrator has identified 14 sites that have dangerous levels of asbestos-tainted vermiculite and require cleanup efforts; and

(22) although it is impracticable to eliminate exposure to asbestos entirely because asbestos is a naturally occurring mineral in the environment and occurs in several deposits throughout the United States, Congress needs to do more to protect the public from exposure to asbestos and Congress has the power to prohibit the continued, intentional use of asbestos in consumer products.

SEC. 3. ASBESTOS-CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end the following:

"Subtitle B—Asbestos-Containing Products

"SEC. 221. DEFINITIONS.

''In this subtitle:

''(1) ASBESTOS-CONTAINING PRODUCT.—The term 'asbestos-containing product' means any product (including any part) to which asbestos is deliberately or knowingly added or in which asbestos is deliberately or knowingly used in any concentration.

''(2) CONTAMINANT-ASBESTOS PRODUCT.—The term 'contaminant-asbestos product' means any product that contains asbestos as a contaminant of any mineral or other substance, in any concentration.

''(3) DISTRIBUTE IN COMMERCE.—

''(A) IN GENERAL.—The term 'distribute in commerce' has the meaning given the term in section 3.

''(B) EXCLUSIONS.—The term 'distribute in commerce' does not include—

''(i) an action taken with respect to an asbestos-containing product in connection with the end use of the asbestos-containing product by a person that is an end user; or

''(ii) distribution of an asbestos-containing product by a person solely for the purpose of disposal of the asbestos-containing product in compliance with applicable Federal, State, and local requirements.

''(4) DURABLE FIBER.—

''(A) IN GENERAL.—The term 'durable fiber' means a silicate fiber that—

''(i) occurs naturally in the environment; and

''(ii) is similar to asbestos in—

''(I) resistance to dissolution;

''(II) leaching; and

''(III) other physical, chemical, or biological processes expected from contact with lung cells and other cells and fluids in the human body.

''(B) INCLUSIONS.—The term 'durable fiber' includes—

''(i) richterite;

''(ii) winchite;

''(iii) erionite; and

''(iv) nonasbestiform varieties of crocidolite, amosite, anthophyllite, tremolite, and actinolite.

''(5) FIBER.—The term 'fiber' means an acicular single crystal or similarly elongated polycrystalline aggregate particle with a length to width ratio of 3 to 1 or greater.

''(6) PERSON.—The term 'person' means—

''(A) any individual;

''(B) any corporation, company, association, firm, partnership, joint venture, sole proprietorship, or other for-profit or nonprofit business entity (including any manufacturer, importer, distributor, or processor);

''(C) any Federal, State, or local department, agency, or instrumentality; and

''(D) any interstate body.

"SEC. 222. NATIONAL ACADEMY OF SCIENCES STUDY.

''The Administrator shall enter into a contract with the National Academy of Sciences to study and, not later than 18 months after the date of enactment of this subtitle, provide the Administrator, and other Federal agencies, as appropriate—

''(1) a description of the current state of the science relating to the human health effects of exposure to asbestos and other durable fibers; and

''(2) recommendations for the establishment of—

''(A) a uniform system for the establishment of asbestos exposure standards for workers, school children, and other populations; and

''(B) a uniform system for the establishment of protocols for detecting and measuring asbestos.

"SEC. 223. ASBESTOS POLICIES PANEL.

''(a) PANEL.—

''(1) IN GENERAL.—The Administrator shall establish an Asbestos Policies Panel (referred to in this section as the 'panel') to study asbestos and other durable fibers.

''(2) MEMBERSHIP.—The panel shall be comprised of representatives of—

''(A) the Secretary of Labor;

''(B) the Secretary of Health and Human Services; and

''(C) the Chairman of the Consumer Product Safety Commission;

''(D) nongovernmental environmental, public health, and consumer organizations;

''(E) industry;

''(F) school officials;

''(G) public health officials;

''(H) labor organizations; and

''(I) the public.

''(b) DUTIES.—The panel shall—

''(1) provide independent advice and counsel to the Administrator and other Federal agencies on policy issues associated with the use and management of asbestos and other durable fibers; and

''(2) study and, not later than 2 years after the date of enactment of this subtitle, provide the Administrator, other Federal agencies, and Congress recommendations concerning—

''(A) implementation of subtitle A;

''(B) grant programs under subtitle A;

''(C) revisions to the national emissions standards for hazardous air pollutants promulgated under the Clean Air Act (42 U.S.C. 7401 et seq.);

''(D) legislative and regulatory options for improving consumer and worker protections against harmful health effects of exposure to asbestos and durable fibers;

''(E) whether the definition of asbestos-containing material, meaning any material that contains more than 1 percent asbestos by weight, should be modified throughout the Code of Federal Regulations;

''(F) the feasibility of establishing a durable fibers testing program;

''(G) options to improve protections against exposure to asbestos from asbestos-containing products and contaminant-asbestos products in buildings;

''(H) current research on and technologies for disposal of asbestos-containing products and contaminant-asbestos products; and

''(I) at the option of the panel, the effects on human health that may result from exposure to ceramic, carbon, and other manmade fibers.

"SEC. 224. STUDY OF ASBESTOS-CONTAINING PRODUCTS AND CONTAMINANT-ASBESTOS PRODUCTS.

''(a) IN GENERAL.—In consultation with the Secretary of Labor, the Chairman of the International Trade Commission, the Chairman of the Consumer Product Safety Commission, and the Assistant Secretary for Occupational Safety and Health, the Administrator shall conduct a study on the status of the manufacture, processing, distribution in commerce, ownership, importation, and disposal of asbestos-containing products and contaminant-asbestos products in the United States.

''(b) ISSUES.—In conducting the study, the Administrator shall examine—

''(1) how consumers, workers, and businesses use asbestos-containing products and contaminant-asbestos products that are entering commerce as of the date of enactment of this subtitle; and

''(2) the extent to which consumers and workers are being exposed to unhealthful levels of asbestos through exposure to products described in paragraph (1).

''(c) REPORT.—Not later than 18 months after the date of enactment of this subtitle, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study.

"SEC. 225. PROHIBITION ON ASBESTOS-CONTAINING PRODUCTS.

''(a) IN GENERAL.—Subject to subsection (b), the Administrator shall promulgate—

''(1) not later than 1 year after the date of enactment of this subtitle, proposed regulations that—

''(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos-containing products; and

''(B) provide for implementation of subsections (b) and (c); and

''(2) not later than 2 years after the date of enactment of this subtitle, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos-containing products.

''(b) EXEMPTIONS.—

''(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant an exemption from the requirements of subsection (a) if the Administrator determines that—

''(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

''(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral, that—

''(i) does not present an unreasonable risk of injury to public health or the environment; and

''(ii) may be substituted for an asbestos-containing product.

''(2) TERMS AND CONDITIONS.—An exemption granted under this subsection shall be in effect for such period (not to exceed 1 year) and subject to such terms and conditions as the Administrator may prescribe.

''(c) DISPOSAL.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this subtitle, each person that possesses an asbestos-containing product that is subject to the prohibition established under this section shall dispose of the asbestos-containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

''(2) EXEMPTION.—Nothing in paragraph (1)—

''(A) applies to an asbestos-containing product that—

''(i) is no longer in the stream of commerce; or

''(ii) is in the possession of an end user; or

''(B) requires that an asbestos-containing product described in subparagraph (A) be removed or replaced.

"SEC. 226. PUBLIC EDUCATION PROGRAM.

''(a) IN GENERAL.—Not later than 2 years after the date of enactment of this subtitle, and subject to subsection (c), in consultation with the Chairman of the Consumer Product Safety Commission and the Secretary of Labor, the Administrator shall establish a program to increase awareness of the dangers posed by asbestos-containing products and contaminant-asbestos products in homes and workplaces.

''(b) GREATEST RISKS.—In establishing the program, the Administrator shall—

''(1) base the program on the results of the study conducted under section 224;

''(2) give priority to asbestos-containing products and contaminant-asbestos products used by consumers and workers that pose the greatest risk of injury to human health; and

''(3) at the option of the Administrator on receipt of a recommendation from the Asbestos Policies Panel, include in the program the conduct of projects and activities to increase public awareness of the effects on human health that may result from exposure to—

''(A) durable fibers; and

''(B) ceramic, carbon, and other manmade fibers.

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

(b) VERMICULITE INSULATION.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency and the Consumer Product Safety Commission shall begin a national campaign to educate consumers concerning—

(1) the dangers of vermiculite insulation that may be contaminated with asbestos; and

(2) measures that homeowners and business owners can take to protect against those dangers.

SEC. 4. ASBESTOS-CAUSED DISEASES.

Subpart 1 of part C of title IV of the Public Health Service Act (42 U.S.C. 285 et seq.) is amended by adding at the end the following:

''SEC. 417D. RESEARCH ON ASBESTOS-CAUSED DISEASES.

''(a) IN GENERAL.—The Secretary, acting through the Director of NIH and the Director of the Centers for Disease Control and Prevention, shall expand, intensify, and coordinate programs for the conduct and support of research on diseases caused by exposure to asbestos, particularly mesothelioma, asbestosis, and pleural injuries.

''(b) ADMINISTRATION.—The Secretary shall carry out this section—

''(1) through the Director of NIH and the Director of the CDC (Centers for Disease Control and Prevention); and

''(2) in collaboration with the Administrator of the Agency for Toxic Substances and Disease Registry and the head of any other agency that the Secretary determines to be appropriate.

''(c) MESOTHELIOMA REGISTRY.—Not later than 1 year after the date of enactment of this section, the Director of the Centers for Disease Control and Prevention, in cooperation with the Director of the National Institute for Occupational Safety and Health and the Administrator of the Agency for Toxic Substances and Disease Registry, shall establish a mechanism by which to obtain data from State cancer registries and other cancer registries, which shall form the basis for establishing a Mesothelioma Registry.

''(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available for the purposes described in subsection (a) under other law, there are authorized to be appropriated to carry out this section such sums as are necessary for fiscal year 2004 and each fiscal year thereafter.

''SEC. 417E. MESOTHELIOMA RESEARCH AND TREATMENT CENTERS.

''(a) IN GENERAL.—The Director of NIH shall provide $1,000,000 for each of fiscal years 2004 through 2008 for each of up to 10 mesothelioma disease research and treatment centers.

''(b) REQUIREMENTS.—The Centers shall—

''(1) be chosen through competitive peer review;

''(2) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

''(3) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans, who have suffered excessively from mesothelioma;

''(4) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

''(5) be engaged in public education about mesothelioma and prevention, screening, and treatment;

''(6) be participants in the National Mesothelioma Registry;

''(7) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research; and

''(8) be focused on research and treatments for mesothelioma that have historically been underfunded.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2004 through 2008.''.

SEC. 5. CONFORMING AMENDMENTS.

The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end of the items relating to title II the following:

''Subtitle B—Asbestos-Containing Products

''Sec. 221. Definitions.
''Sec. 222. National Academy of Sciences Study.
''Sec. 223. Asbestos Policies Panel.
''Sec. 224. Study of asbestos-containing products and contaminant-asbestos products.
''Sec. 225. Prohibition on asbestos-containing products.
''Sec. 226. Public education program.''.

By Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH):

S. 1116. A bill to amend the Federal Water Pollution Control Act to direct the Great Lakes National Program Office of the Environmental Protection Agency to develop, implement, monitor, and report on a series of indicators of water quality and related environmental factors in the Great Lakes; to the Committee on Environmental and Public Works.

Mr. LEVIN. Mr. President, my colleagues Senators DEWINE and VOINOVICH of Ohio, Senator STABENOW of Michigan, and I are pleased to introduce the Great Lakes Water Quality Indicators and Monitoring Act. This bill will provide science-based assessments of the health of the Great Lakes and whether restoration projects are working. The bill directs the Environmental Protection Agency to develop indicators of Great Lakes water quality and related environmental factors and a comprehensive network to monitor those indicators.

The Great Lakes contain almost 20 percent of the world's fresh water. Millions of people rely on the lakes for drinking water, for economic livelihoods such as fishing and shipping, and for recreational opportunities, including swimming and boating. But the Great Lakes have suffered from decades of toxic discharges, urban and agricultural runoff, and other environmental challenges. We've made some progress in improving water quality, but we know we have a long way to go.

The stewards of the lakes at the Federal, State, and local levels use a variety of methods to determine the health of the Great Lakes and whether they are improving. For example, EPA and the Fish and Wildlife Service monitor the accumulation of chemicals in Great Lakes fish. The National Oceanic and Atmospheric Administration detects changes in the ecosystem from space-based satellites and waterborne buoys. The Geological Survey samples stream flow and quality, and the states inspect for compliance with water quality standards.

But these efforts to collect scientific data are largely voluntary and suffer from a lack of funding and coordination. They use inconsistent methods that often produce incompatible results.

This week, members of the Great Lakes Task Force released a General Accounting Office report on Great Lakes environmental programs. GAO looked at almost 200 Federal and State programs and found that a lack of coordination, poorly defined goals, and insufficient data make it difficult to evaluate the success of these programs. GAO found that there are no data collected regularly throughout the Great Lakes, and that the existing data are inadequate to determine whether water quality and other environmental conditions are improving.

In 1990, I authored the Great Lakes Critical Programs Act, which strengthened the water quality standards in the Great Lakes region. This year, Congress passed the Great Lakes Legacy Act, to speed the cleanup of contaminated bottom sediment. But we haven't established a way to evaluate the impact of these measures.

A restoration program is only as good as its ability to demonstrate results. To show results, we need science-based indicators of water quality and related environmental factors, and we need to monitor those indicators regularly throughout the ecosystem.

GAO recommends that EPA's Great Lakes National Program Office lead an effort to develop indicators and a monitoring network. Our bill gives that office the mandate to work with other federal agencies and Canada to identify and measure water quality and other environmental factors on a regular basis. The initial set of data collected through this network will serve as a benchmark against which to measure future improvements. Those measurements will help us make decisions on how to steer future restoration efforts. With a clear picture of how the Great Lakes are changing, we can change course when needed and spend public funds on the most pressing demands.

This bill serves a second purpose—it provides EPA with dedicated funding to make sure that data collection can begin in a timely manner and be carried out consistently and comprehensively as long as the Great Lakes are in need.

I encourage my colleagues to support this bill and help speed its passage.

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. 1116

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 ''Great Lakes Water Quality Indicators and Monitoring Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) there are no comprehensive, regularly-collected data that reveal whether the water quality or related environmental factors of the Great Lakes have improved as a result of efforts to remediate and protect the Great Lakes;

(2) that lack of data was confirmed in May 2003 in a report by the General Accounting Office that concluded that existing data were inadequate to assess the overall progress of restoration efforts in the Great Lakes; and

(3) without those data, it is impossible to determine whether—

(A) progress is being made toward achieving the goals contained in the Great Lakes Water Quality Agreement between the United States and Canada; or

(B) Federal and State water quality standards and remediation programs are effective.

SEC. 3. GREAT LAKES WATER QUALITY INDICATORS AND MONITORING.

(a) IN GENERAL.—Section 118(c)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1268(c)(1)) is amended by striking subparagraph (B) and inserting the following:

''(B)(i) not later than 2 years after the date of enactment of this clause, in cooperation with Canada and appropriate Federal agencies (including the United States Geological Survey, the National Oceanic and Atmospheric Administration, and the United States Fish and Wildlife Service), develop and implement a set of science-based indicators of water quality and related environmental factors in the Great Lakes, including, at a minimum, measures of toxic pollutants that have accumulated in the Great Lakes for a substantial period of time, as determined by the Program Office;

''(ii) not later than 4 years after the date of enactment of this clause—

''(I) establish a Federal network for the regular monitoring of, and collection of data throughout, the Great Lakes basin with respect to the indicators described in clause (i); and

''(II) collect an initial set of benchmark data from the network; and

''(iii) not later than 2 years after the date of collection of the data described in clause (ii)(II), and biennially thereafter, in addition to the report required under paragraph (10), submit to Congress, and make available to the public, a report that—

''(I) describes the water quality and related environmental factors of the Great Lakes (including any changes in those factors), as determined through the regular monitoring of indicators under clause (ii)(I) for the period covered by the report; and

''(II) identifies any emerging problems in the water quality or related environmental factors of the Great Lakes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 118 of the Federal Water Pollution Control Act (33 U.S.C. 1268) is amended by striking subsection (h) and inserting the following:

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section (other than subsection (c)(1)(B)) $25,000,000 for each of fiscal years 2004 through 2008.

''(2) GREAT LAKES WATER QUALITY INDICATORS AND MONITORING.—There are authorized to be appropriated to carry out subsection (c)(1)(B)—

''(A) $4,000,000 for fiscal year 2004;

''(B) $6,000,000 for fiscal year 2005;

''(C) $8,000,000 for fiscal year 2006; and

''(D) $10,000,000 for fiscal year 2007.''.

By Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. JEFFORDS):

S. 1117. A bill to provide a definition of a prevailing party for Federal fee-shifting statutes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased today to introduce the Settlement Encouragement and Fairness Act of 2003. This bill provides that when plaintiffs bring a lawsuit that acts as a catalyst for a change in position by the opposing party, they will be considered the ''prevailing party'' for purposes of recovering attorneys' fees under Federal law. The bill will help ensure that people who are the victims of civil rights, environmental and worker rights' abuses can obtain legal representation to enforce their rights.

Over the course of our history, Congress has often enacted laws encouraging private litigants to implement public policy through our court system. An integral part of many such laws are provisions that help individuals obtain adequate legal representation by providing that the defendants will pay the plaintiffs' attorneys fees in cases were the plaintiff prevails. In laws involving public accommodations, housing, labor, disabilities, age discrimination, violence against women, voting rights, pollution and others, Congress has acted over and over again to empower private litigants in their pursuit of justice. Presently, there are over two hundred statutory fee-shifting provisions that allow for some sort of payment of attorneys' fees to a prevailing plaintiff.

Until 2001, in interpreting these fee-shifting statutes in cases where a settlement was reached before trial, nine circuit courts of appeals embraced the ''catalyst theory'' to determine whether attorneys' fees could be obtained. The catalyst theory required the payment of fees where the lawsuit caused a change in the position or conduct of the defendant. Only one circuit court, the Fourth Circuit, applied a more narrow definition of prevailing party, requiring a judgment or a court approved settlement in order for a plaintiff to obtain attorneys' fees.

In Buckhannon Board of Care & Home Inc. v. West Virginia Department of Health and Human Services (2001), a case arising out of the Fourth Circuit, the U.S. Supreme Court ruled, in a 5–4 decision, that plaintiffs may recover attorneys' fees from defendants only if they have been awarded relief by a court, not if they prevailed through a voluntary change in the defendant's behavior or a private settlement. The Buckhannon ruling eliminated the catalyst theory for all fee shifting statutes in federal law.

The bill I introduce today restores the catalyst theory that the vast majority of courts had approved prior to the Buckhannon decision as a basis for seeking attorneys fees under Federal fee shifting statutes. It provides a new definition of ''prevailing party'' for all such statutes to encompass the common situation where defendants alter their conduct after a lawsuit has commenced but without waiting for a court order requiring them to do so. This critical change in the definition of ''prevailing party'' will allow attorneys representing clients who cannot otherwise afford to hire a lawyer to recover their costs and to be paid a reasonable rate for their work.

The Buckhannon case itself illustrates the need for this legislation. Buckhannon Board and Care Home in West Virginia, an operator of assisted living residences, failed a state inspection because some residents were incapable of ''self-preservation'' as defined by state law. After receiving orders to close its facilities, Buckhannon sued the state seeking declaratory and injunctive relief that the ''self-preservation'' requirement violated the Fair Housing Amendments Act and the Americans with Disabilities Act. While the lawsuit was pending but before the court ruled, the state legislature eliminated the ''self-preservation'' requirement.

Imagine how the plaintiffs felt when they learned that their lawsuit had forced a change in the law not only for their own case but also for all of the other individuals who had been subject to the improper self-preservation doctrine. If ever there was a complete and total victory caused by litigation, this was it. But, as Casey Stengall once said, ''It ain't over 'til it's over.'' Once the state legislature changed the law, the District Court granted defendant's motion to dismiss the case as moot and denied Buckhannon's request for attorneys' fees. The court ruled that the legislative action did not amount to a judicially required change in position that would permit Buckhannon to be considered a ''prevailing party'' in the case. On appeal, the Court of Appeals for the Fourth Circuit and then the U.S. Supreme Court denied attorneys' fees for the plaintiffs, ruling that because the change in the defendants' conduct was voluntary rather than ordered by the court, Buckhannon was not a prevailing party.

I believe the narrow definition of ''prevailing party'' endorsed by the Buckhannon decision will result in many injustices going unchallenged. Indeed, in calculating whether to take a case, an attorney for a plaintiff will have to consider not only the chances of losing, but the chances of winning too easily. If businesses or individuals are able to engage in egregious conduct, refuse to change their behavior without a lawsuit being filed against them, and then avoid paying attorneys' fees by changing their conduct on the eve of trial, the effect will be that

some lawyers will decide they cannot afford to take a case even if the claims are very strong.

Imagine a case involving a legitimate claim of housing discrimination where, after many months, perhaps even years of work, as the attorney who labored for the plaintiff prepares into the evening for opening statements, the attorney learns that the defendant has admitted its wrongful conduct and offered substantial compensation and a promise to change its practices. This offer came about only because of the spotlight the lawsuit put on the defendant and the possibility of a large jury verdict. This would be a complete victory for the plaintiff, but under Buckhannon, the attorney who labored for years to bring about this result may not be paid. Later, if the same defendant returns to discriminatory practices, the next plaintiff might very well not be able to find competent counsel who will take the case.

Ironically, the failure to correct the Buckhannon decision could lead to plaintiffs' attorneys dragging out law suits far beyond a point in time where the parties could reach a fair settlement, in order to insure that they meet the Buckhannon definition of ''prevailing party.'' This will increase the costs of litigation and discourage settlement. Simply put, Buckhannon creates unnatural tensions between attorneys and clients and may even push attorneys to not act in the best interest of their clients.

Certainly we can do better. Congress has passed important laws to protect the public in the work place and in our communities; we must ensure that these laws can be enforced, when necessary, in court. The Settlement Encouragement and Fairness Act of 2003 will help insure that all our citizens have the ability to meaningfully challenge injustice.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. SCHUMER, and Mrs. CLINTON):

S. 1118. A bill to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. JEFFORDS. Mr. President, I am very pleased to introduce the Champlain Valley National Heritage Act of 2003. I am joined by Senator LEAHY and Senators SCHUMER and CLINTON of New York. This bill will establish a National Heritage Partnership within the Champlain Valley. Passage of this bill will culminate a process to enhance the incredible cultural resources of the Champlain Valley.

The Champlain Valley of Vermont and New York has one of the richest and most intact collections of historic resources in the United States. Fort Ticonderoga still stands where it has for centuries, at the scene of numerous battles critical to the birth of our Nation. Revolutionary gunboats have recently been found fully intact on the bottom of Lake Champlain. Our cemeteries are the permanent resting place for great explorers, soldiers and sailors. The United States and Canada would not exist today but for events that occurred in this region.

We in Vermont and New York take great pride in our history. We preserve it, honor it and show it off to visitors from around the world. These visitors are also very important to our economy. Tourism is among the most important industries in this region and has much potential for growth.

The Champlain Valley Heritage Partnership will bring together more than one hundred local groups working to preserve and promote our heritage. Up to $2 million a year will be made available from the National Park Service through the Lake Champlain Basin Program to support local efforts to preserve and interpret our heritage and present it to the world. Most of the funding will be given to small communities to help preserve their heritage and develop economic opportunities.

This project has taken many years for me to bring to the point of introducing legislation. This has been time well spent working at the grass-roots level to develop a framework to direct federal resources to where it will do the most good. I am confident that we have found the best model. This will be a true partnership that supports each member but does not impose any new federal requirements.

The Champlain Valley National Heritage Partnership will preserve our historic resources, interpret and teach about the events that shaped our nation and will be an engine for economic growth. I am hopeful that this bill, which was considered by the Senate last year, will become law during this Congress.

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. 1118

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 ''Champlain Valley National Heritage Partnership Act of 2003''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Champlain Valley and its extensive cultural and natural resources have played a significant role in the history of the United States and the individual States of Vermont and New York;

(2) archaeological evidence indicates that the Champlain Valley has been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Iroquois and Algonquin descent;

(3) the linked waterways of the Champlain Valley, including the Richelieu River in Canada, played a unique and significant role in the establishment and development of the United States and Canada through several distinct eras, including—

(A) the era of European exploration, during which Samuel de Champlain and other explorers used the waterways as a means of access through the wilderness;

(B) the era of military campaigns, including highly significant military campaigns of the French and Indian War, the American Revolution, and the War of 1812; and

(C) the era of maritime commerce, during which canals boats, schooners, and steamships formed the backbone of commercial transportation for the region;

(4) those unique and significant eras are best described by the theme ''The Making of Nations and Corridors of Commerce'';

(5) the artifacts and structures associated with those eras are unusually well-preserved;

(6) the Champlain Valley is recognized as having one of the richest collections of historical resources in North America;

(7) the history and cultural heritage of the Champlain Valley are shared with Canada and the Province of Quebec;

(8) there are benefits in celebrating and promoting this mutual heritage;

(9) tourism is among the most important industries in the Champlain Valley, and heritage tourism in particular plays a significant role in the economy of the Champlain Valley;

(10) it is important to enhance heritage tourism in the Champlain Valley while ensuring that increased visitation will not impair the historical and cultural resources of the region;

(11) according to the 1999 report of the National Park Service entitled ''Champlain Valley Heritage Corridor Project'', ''the Champlain Valley contains resources and represents a theme 'The Making of Nations and Corridors of Commerce', that is of outstanding importance in U.S. history''; and

(12) it is in the interest of the United States to preserve and interpret the historical and cultural resources of the Champlain Valley for the education and benefit of present and future generations.

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

(1) to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York to recognize the importance of the historical, cultural, and recreational resources of the Champlain Valley region to the United States;

(2) to assist the State of Vermont and New York, including units of local government and nongovernmental organizations in the States, in preserving, protecting, and interpreting those resources for the benefit of the people of the United States;

(3) to use those resources and the theme ''The Making of Nations and Corridors of Commerce'' to—

(A) revitalize the economy of communities in the Champlain Valley; and

(B) generate and sustain increased levels of tourism in the Champlain Valley;

(4) to encourage—

(A) partnerships among State and local governments and nongovernmental organizations in the United States; and

(B) collaboration with Canada and the Province of Quebec to—

(i) interpret and promote the history of the waterways of the Champlain Valley region;

(ii) form stronger bonds between the United States and Canada; and

(iii) promote the international aspects of the Champlain Valley region; and

(5) to provide financial and technical assistance for the purposes described in paragraphs (1) through (4).

SEC. 3. DEFINITIONS.

In this Act:

(1) HERITAGE PARTNERSHIP.—The term ''Heritage Partnership'' means the Champlain Valley National Heritage Partnership established by section 4(a).

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the Lake Champlain Basin Program.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed under section 4(b)(B)(i).

(4) REGION.—

(A) IN GENERAL.—The term ''region'' means any area or community in 1 of the States in which a physical, cultural, or historical resource that represents the theme is located.

(B) INCLUSIONS.—The term ''region'' includes

(i) the linked navigable waterways of—

(I) Lake Champlain;

(II) Lake George;

(III) the Champlain Canal; and

(IV) the portion of the Upper Hudson River extending south to Saratoga;

(ii) portions of Grand Isle, Franklin, Chittenden, Addison, Rutland, and Bennington Counties in the State of Vermont; and

(iii) portions of Clinton, Essex, Warren, Saratoga and Washington Counties in the State of New York.

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

(6) STATE.—the term ''State'' means—

(A) the State of Vermont; and

(B) the State of New York.

(7) THEME.—The term ''theme'' means the theme ''The Making of Nations and Corridors of Commerce'', as the term is used in the 1999 report of the National Park Service entitled ''Champlain Valley Heritage Corridor Project'', that describes the periods of international conflict and maritime commerce during which the region played a unique and significant role in the development of the United States and Canada.

SEC. 4. HERITAGE PARTNERSHIP.

(a) ESTABLISHMENT.—There is established in the regional the Champlain Valley National Heritage Partnership.

(b) MANAGEMENT ENTITY.—

(1) DUTIES.—

(A) IN GENERAL.—The management entity shall implement the Act.

(B) MANAGEMENT PLAN.—

(i) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall develop a management plan for the Heritage Partnership.

(ii) EXISTING PLAN.—Pending the completion and approval of the management plan, the management entity may implement the provisions of this Act based on its federally authorized plan ''Opportunities for Action, an Evolving Plan For Lake Champlain''.

(iii) CONTENTS.—The management plan shall include—

(I) recommendations for funding, managing, and developing the Heritage Partnership;

(II) a description of activities to be carried out by public and private organizations to protect the resources of the Heritage Partnership;

(III) a list of specific, potential sources of funding for the protection, management, and development of the Heritage Partnership;

(IV) an assessment of the organizational capacity of the management entity to achieve the goals for implementation; and

(V) recommendations of ways in which to encourage collaboration with Canada and the Province of Quebec in implementing this Act.

(iv) CONSIDERATIONS.—In developing the management plan under clause (i), the management entity shall take into consideration existing Federal, State, and local plans relating to the region.

(v) SUBMISSION TO SECRETARY FOR APPROVAL.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall submit the management plan to the Secretary for approval.

(II) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (I), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Partnership is submitted to the Secretary.

(vi) APPROVAL.—Not later than 90 days after receiving the management plan submitted under subparagraph (V)(I), the Secretary, in consultation with the States, shall approve or disapprove the management plan.

(vii) ACTION FOLLOWING DISAPPROVAL.—

(I) GENERAL.—If the Secretary disapproves a management plan under subparagraph (vi), the Secretary shall—

(aa) advise the management entity in writing of the reasons for the disapproval;

(bb) make recommendations for revisions to the management plan; and

(cc) allow the management entity to submit to the Secretary revisions to the management plan.

(II) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (vii)(I)(cc), the Secretary shall approve or disapprove the revision.

(viii) AMENDMENT.—

(I) IN GENERAL.—After approval by the Secretary of the management plan, the management entity shall periodically—

(aa) review the management plan; and

(bb) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any amendments to the management plan that the management entity considers to be appropriate.

(II) EXPENDITURE OF FUNDS.—No funds made available under this Act shall be used to implement any amendment proposed by the management entity under subparagraph (viii)(1) until the Secretary approves the amendments.

(2) PARTNERSHIPS.—

(A) IN GENERAL.—In carrying out this Act, the management entity may enter into partnerships with—

(i) the States, including units of local governments in the States;

(ii) nongovernmental organizations;

(iii) Indian Tribes; and

(iv) other persons in the Heritage Partnership.

(B) GRANTS.—Subject to the availability of funds, the management entity may provide grants to partners under subparagraph (A) to assist in implementing this Act.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

(c) ASSISTANCE FROM SECRETARY.—To carry out the purposes of this Act, the Secretary may provide technical and financial assistance to the management entity.

SEC. 5. EFFECT.

Nothing in this Act—

(1) grants powers of zoning or land use to the management entity;

(2) modifies, enlarges, or diminishes the authority of the Federal Government or a State or local government to manage or regulate any use of land under any law (including regulations); or

(3) obstructs or limits private business development activities or resource development activities.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act not more than a total of $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) not be less than 50 percent.

SEC. 7. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

Mr. LEAHY. Mr. President, I am very pleased to join with my Senate colleagues from Vermont and New York as we reintroduce the Lake Champlain Heritage Act of 2003. Last year, we took a significant step in helping all Americans better appreciate Lake Champlain with the passage of Daniel Patrick Moynihan Lake Champlain Basin Program Act. Today, we reaffirm our commitment to the continuing preservation of Lake Champlain's important historic sites and artifacts.

The role of Lake Champlain cannot be overlooked. From the earliest human habitation 10,000 years ago, to the Revolutionary War and the conduct of trade in the 19th and 20th centuries, this 120-mile-long basin has played a pivotal role in the Course of American history.

It was on Lake Champlain that Benedict Arnold's motley group of 15 American ships engaged a much larger and far superior British fleet in the Battle at Valcour Island. While the battle ended in a loss for the Americans, it successfully delayed the British fleet and became known as one of the most crucial engagements of the American Revolution.

This act is intended to promote and preserve these centuries of struggle in the Lake Champlain Valley. It will advance the cultural heritage goals of ''Opportunities for Action,'' a comprehensive pollution prevention, control, and restoration plan developed by the Lake Champlain Basin Program. And it will also promote such things as locally planned and managed heritage networks and a management strategy for the lake's underwater cultural resources. With the 400th anniversary of Samuel De Champlain's arrival in the valley coming up in 2009, this bill could not be more needed.

Vermonters and New Yorkers have a serious responsibility to preserve the historical and cultural heritage of the Lake Champlain Valley for future generations. Local communities on both sides of the lake have helped us develop a bold vision to enhance the conservation, interpretation, and enjoyment of our shared history. We can help revitalize local economies, promote heritage tourism, and improve the valley's cultural legacy by making additional resources available to communities and organizations through the Lake Champlain Basin Program.

It is with great pride that I stand here today with my colleagues from

Vermont and New York to reassert our partnership for Champlain Valley National Heritage Act and continue our cooperative effort to conserve, interpret, and honor our common heritage.

By Mr. GRAHAM of Florida (for himself, Mr. HATCH, and Mr. JEFFORDS):

S. 1119. A bill to amend the Internal Revenue Code of 1986 to clarify the eligibility of certain expenses for the low-income housing credit; to the Committee on Finance.

Mr. GRAHAM of Florida. Mr. President, today I am re-introducing legislation that will improve the effectiveness of one of the most successful programs we have to help Americans get affordable housing, the Low-Income Housing Tax Credit. I am proud to be joined in this effort by my esteemed colleagues, Senators HATCH and JEFFORDS.

The need for affordable housing is as great today as ever. The generally accepted definition of affordability is for a household to pay no more than 30 percent of annual income on housing. Today, twelve million renter and homeowner households pay more than 50 percent toward housing costs. In fact, nowhere in the country can a family with one minimum wage worker afford the rent on a two-bedroom apartment.

The Low-Income Housing Tax Credit was created in 1986 to attract private sector capital to the affordable housing market. It has been the major engine for financing the production of low-income multi-family housing. The program offers developers and investors in affordable housing credit against their federal income tax in return for their investment. Since its inception, the Low-Income Housing Tax Credit has assisted in the development and availability of roughly 850,000 new and rehabilitated units of affordable housing.

In the fall of 2000, the Internal Revenue Service isssued its first guidance in the program's 16-year history. That guidance was issued in the form of several technical advice memoranda, or TAMs, and specified which development costs will be eligible and ineligible for the credit, known as eligible basis.

TAMs are not official guidance, reviewed by the Treasury Department, but instead, are IRS legal opinions providing direction to IRS agents conducting audits. They are not citable in court proceedings because they are not official guidance. In the absence of official guidance, TAMs could be taken as the official government position. In fact, that is exactly what is happening.

The problem is that the IRS's position is contrary to common industry practice, and eliminates many reasonable, legitimate and necessary costs from the tax credit. This has caused uncertainty among investors as to whether the credits for which they have paid, will be realized. Moreover, these guidelines could adversely affect the ability of States to target affordable housing to those who need it the most.

It is important to understand, this legislation will not increase the pool of low-income housing tax credits. The Internal Revenue Code sets the maximum amount of credits that States may allocate to developers of affordable housing properties. Thanks to legislation that we enacted in 2000, the amount available to each State has increased from $1.50 to $1.75 times the State's population. That 40 percent increase is expected to produce about 30,000 more units a year. Since the unmet demand for affordable housing is many times greater than what can be built with the help of the credit, our legislation should not affect revenues. In fact, the only way for this legislation to have a revenue impact is if the legislation makes it easier for the states to use the credits we intend for them to have under present law.

What this legislation does do, however, is very important. To understand its importance, it may be useful to have a little background on how the low-income housing tax credit works.

In economic terms, the credit is equity financing which replaces a portion of debt that would otherwise be necessary to finance a property. By replacing debt, credits work to reduce interest costs. This allows a property owner to offer lower rents than otherwise would be the case.

The most unique feature of the program is that state housing finance agencies award Federal tax credits to developers of rental housing. Since these agencies have considerable flexibility in how they distribute the credits, developers compete for the limited number of tax credits by submitting project proposals. The agencies rate the proposals, and allocate credits to individual properties based on criteria provided in the Internal Revenue Code, and on the state's particular housing needs and priorities.

The Internal Revenue Code also limits the amount of credits a state may allocate to a particular property. The limit is determined as percentage of the basis of a property. The basis is, generally speaking, the cost of constructing a building that is part of an affordable housing project. Non-federally subsidized new construction may receive a 9 percent credit. Existing buildings and new buildings receiving other federal subsidies may get a 4 percent credit.

The IRS takes the position that certain construction costs should not be included in basis. This position makes a large number of affordable housing properties financially unfeasible, and weakens the economics of those that still pass minimum underwriting requirements. The loss of equity would surely affect the properties that serve the lowest income tenants, provide higher levels of service, or operate in high cost areas. The reason that this is problematic is simple. Reducing the amount of credits does not reduce the development costs. It merely alters the source of financing from equity to debt, forcing either higher rents or lower quality construction.

Apparently, the Treasury Department and Internal Revenue Service agree that this is an issue worthy of review, as both agencies have included it in their business plan. Last year, the IRS issued new guidance on one of the items addressed by the TAMs, but there does not appear to be a full review of the effect of the positions set forth in the TAMs anytime soon.

This legislation would amend the Internal Revenue Code to specify that certain associated development costs are to be included in eligible basis. In many cases, the largest item excluded from eligible basis under the TAMs is ''impact fees.'' Impact fees are fees required by the government ''as a condition to the development'' and considered ineligible because they are one-time costs, unlike building permits that need to be renewed each time a building is built. These fees cover a wide range of infrastructure improvements including sewer lines, schools, and roads. Certainly, whether or not they are includable in basis for the purpose of calculating the amount of tax credit, these costs will be incurred and will impact the economics of the property. As I mentioned previously, the IRS has recently addressed the inclusion of impact fees in eligible basis, but not other costs directly related to building construction.

Other items that would be severely restricted or excluded from eligible basis under the interpretations expressed in the TAMs are site preparation costs, development fees, professional fees related to developing the property, and construction financing costs. The legislation we are introducing today will clarify that any cost incurred in preparing a site which is reasonably related to the development of a qualified low-income housing property, any reasonable fee paid to the developer, any professional fee relating to an item includable in basis, and any cost of financing attributable to construction of the building is includable in basis for the purpose of calculating the maximum amount of credit a state may allocate to a low-income housing property.

The intent of these clarifications is simply to codify common industry practice before the issuance of the TAMs. Not only will the legislation allow the low-income tax credit program to provide better quality hosing at lower rental rates than would be possible if the positions taken in the TAMs are followed, but clarification will help simplify administration of the credit by giving both taxpayers and the Internal Revenue Service a clearer statement of the standards that apply in calculating credit amounts.

Our economy is not doing as well as we would like, and there is a significant likelihood that we are going to need even more affordable housing in

the not too distant future. We should be proud that we increased the amount of low-income housing tax credits that will be available to help finance this housing. What we need to do now is to make sure that these credits are used as efficiently as possible to provide housing for those who need it the most. The legislation we are introducing today will help achieve that goal.

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. 1119

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

SECTION 1. ELIGIBILITY OF CERTAIN EXPENSES FOR LOW-INCOME HOUSING CREDIT.

(a) IN GENERAL.—Subsection (d) of section 42 of the Internal Revenue Code of 1986 (relating to low-income housing credit) is amended by adding at the end the following new paragraph:

''(8) ASSOCIATED DEVELOPMENT COSTS INCLUDED IN BASIS.—

''(A) IN GENERAL.—Solely for purposes of this section, associated development costs shall be taken into account in determining the basis of any building which is part of a low-income housing project to the extent not otherwise so taken into account.

''(B) ASSOCIATED DEVELOPMENT COSTS.—For purposes of subparagraph (A), the term 'associated development costs' means, with respect to any building, such building's allocable share of—

''(i) any cost incurred in preparing the site which is reasonably related to the development of the qualified low-income housing project of which the building is a part,

''(ii) any fee imposed by a State or local government as a condition to development of such project,

''(iii) any reasonable fee paid to any developer of such project,

''(iv) any professional fee relating to any item includible in the basis of the building pursuant to this paragraph, and

''(v) any cost of financing attributable to construction of the building (without regard to the source of such financing) which is required to be capitalized.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) housing credit dollar amounts allocated after December 31, 2002, and

(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

By Mr. BAUCUS (for himself, Mr. ROCKEFELLER, MR. BINGAMAN, Mr. DAYTON, and Mrs. MURRAY):

S. 1120. A bill to establish an Office of Trade Adjustment Assistance, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Trade Adjustment Assistance for Firms Reorganization Act.

The Trade Adjustment Assistance for Firms program assists hundreds of mostly small and medium-sized manufacturing and agricultural companies in Montana and nationwide when they face layoffs and lost sales due to import competition. Qualifying companies develop adjustment plans and receive technical assistance to become more competitive, so they can retain and expand employment.

The program is very cost effective. It requires the firms being helped to match the Federal assistance with their own funds, and it pays the government back in Federal and State tax revenues when the firms succeed.

Currently, TAA for Firms clients receive assistance preparing petitions and adjustment plans from twelve Trade Adjustment Assistance Centers, which are Commerce Department contractors. Program and policy decisions are made by a small Headquarters staff in Commerce's Economic Development Administration. This organizational structure is efficient and has served the program well for many years.

For example, TAA for Firms is helping Montola Growers from Culbertson, Montana, to develop cosmetic applications for its rapeseed oil. The program is helping Pyramid Mountain Lumber of Seeley Lake, MT to upgrade its production process and train employees to use new process controls. And it is helping Porterbilt Company of Hamilton to expand its product line.

Last year, in the Trade Act of 2002, a bipartisan majority of Congress voted to reauthorize this important program for seven years and to increase its authorized funding level. The program seemed headed toward some years of smooth sailing. But it turns out that is not the case.

For reasons unrelated to TAA for Firms, EDA is about to move all its Headquarters program operations to its six regional offices, with a policy office in Washington. For TAA for Firms, that means clients will get the same local services from the TAACs, but decisions will be made in six regional offices and the national policy office—a net increase in layers of government. The likely result is more personnel needed to run the program, less centralized and consistent decision making, and less accountability—all without any likely improvement in customer service.

The organizational structure of TAA for Firms is not broken and it doesn't need to be fixed. This bill preserves the existing efficient management structure of the TAA for Firms program. Instead of moving the program out of Commerce Headquarters entirely, it simply moves the program to a different part of the Commerce Department. That way it can continue to be centrally managed with a minimal staff.

Under this bill, administration of TAA for Firms will move from the Economic Development Administration at the Department of Commerce to DOC's International Trade Administration.

Relocating the program to ITA makes a lot more sense that dividing it up among seven different EDA offices, for several reasons. First, ITA has experience running this program, which was located there prior to 1990. Second, relocating TAA for Firms to ITA will result in fewer layers of government and more centralized and accountable program management. It also creates synergies by allowing better coordination of the TAA for Firms program with other trade and trade remedy programs administered by ITA. And it enhances the ability of the Finance Committee to carry out its oversight responsibilities for this program and for trade policy in general.

I want to thank Senators ROCKEFELLER, BINGAMAN, DAYTON, and MURRAY who have joined me in co-sponsoring this bill. This is a simple matter of good, sensible government and I encourage more of my colleagues to lend it their support. I urge Chairman GRASSLEY to take up this bill in the Finance Committee as soon as possible.

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

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

S. 1120

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 ''Trade Adjustment Assistance for Firms Reorganization Act''.

SEC. 2. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

''SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Trade Adjustment Assistance for Firms Reorganization Act, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

''(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

''(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.''.

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

''Sec. 255A. Office of Trade Adjustment Assistance.''.

By Mr. BAUCUS (for himself and Mr. MCCAIN):

S. 1121. A bill to extend certain trade benefits to countries of the greater Middle East; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce, on behalf of my self and Senator MCCAIN, the Middle East Trade and Engagement Act of 2003.

For more than a thousand years, the most important trade route in the world ran through the heart of the

Middle East. The Silk Road that linked the Western world with China wound its way through what is today Egypt, Iraq, Jordan, Turkey, and a host of other countries in the Middle East.

Merchants who traveled either direction along the Silk Road brought with them not only their goods for sale, but also their ideas and culture. In this way, all peoples from the West through the East were enriched with both money and knowledge.

But in modern times, the countries of the Middle East have retreated from their historically critical role in world trade. Today, few countries in the Middle East engage fully in the global trading system.

Many are not members of the World Trade Organization. Many have high barriers to international trade and investment. Their economies have suffered as a result. A declining share of world trade and investment has led to decades of deepening poverty and slow job creation in the countries of the Middle East.

At the same time, they have been experiencing population growth rates among the highest in the world. That means that a growing number of young people will be entering the workforce to look for jobs that don't now exist.

The United States cannot stand idly by as a generation of young people in the Middle East grows up to discover that there is no meaningful work for them, and that they have no way to provide for a family of their own.

The problem will only get worse if we don't act now. As the rest of the world continues to liberalize its trade, the countries of the Middle East will only be left further behind.

That is why we're today introducing the Middle East Trade and Engagement ACt of 2003. Under this Act, countries in the Middle East will be given preferential access to the U.S. market.

This is not a one-way street. Countries must meet certain conditions. They must support our war on terrorism, and they must pursue economic reforms. Only then will they reap the benefits of this legislation.

Our proposal can have an immediate impact. Opening our markets to the countries of the Middle East will encourage higher levels of trade and direct investment in those countries. And we know it can be a success because if has worked before in other regions. Our bill is modeled on successful programs that increased economic development in sub-Saharan Africa and the Andean countries.

This legislation will do the same for the countries of the Middle East. Increased economic development in that region means jobs for the young and the unemployed, some of whom may otherwise be recruited by our enemies in the war on terrorism.

By helping to strengthen these economies, we also increase the number of people who can afford to purchase American products and services. That means increased export opportunities for American businesses and more jobs for American farmers and workers.

President Bush recently announced an initiative to create a free trade area for the United States and the countries of the Middle East by the year 2013. This is a good long-term goal. But the people in the Middle East need our help now. They need jobs now, not ten years from now.

The Middle East Trade and Engagement Act would bring the benefits of trade to the people of the countries in the Middle East in a much shorter time. It would also help those countries make the economic reforms they'll need to make before a free trade area can become a realistic option.

And just as trade in the time of the Silk Road allowed the exchange of ideas and culture as well as goods, increased trade now can strengthen ties between the United States and the countries in the Middle East.

Now, in the Aftermath of the war in Iraq, the whole world's attention is focused on the Middle East. It is the ideal time for the United States to engage these countries in a comprehensive way and help bring them more fully into the global trading system.

I hope that my colleagues will join Senator MCCAIN and me in cosponsoring this important legislation, and I hope we will have a change to consider this in the Finance Committee this year.

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. 1121

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 ''Middle East Trade and Engagement Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the mutual interest of the United States and the countries of the greater Middle East to promote stable and sustainable growth and development throughout the greater Middle East;

(2) Congress views democratization and economic progress in the countries of the greater Middle East as important elements of a policy to address terrorism and endemic instability;

(3) free trade relationships are not a substitute for, but a complement to, necessary political and economic reforms that lead to political liberalization and economic freedom;

(4) the countries of the greater Middle East have enormous economic potential and are of enduring political significance to the United States;

(5) despite their economic potential, the countries of the greater Middle East are experiencing deepening poverty, slow job creation, and a declining share of world trade and investment, while at the same time experiencing population growth rates among the highest in the world;

(6) these economic conditions are in part the result of barriers to trade and investment, a failure to engage fully in the global trading system, lack of participation in the World Trade Organization, and, often, a lack of economic diversification and over-reliance on the energy sector;

(7) offering the countries of the greater Middle East enhanced trade preferences will encourage higher levels of trade and direct investment and help bring those countries more fully into the global trading system;

(8) higher levels of trade and investment and greater involvement in the global trading system can lead to increased economic development, which can in turn lead to more jobs for people in the countries of the greater Middle East; and

(9) encouraging the reciprocal reduction of trade and investment barriers in the greater Middle East will enhance the benefits of trade and investment for all the countries in the greater Middle East as well as enhance commercial and political ties between the United States and the greater Middle East.

SEC. 3. STATEMENT OF POLICY.

Congress supports—

(1) encouraging increased trade and investment between the United States and the countries of the greater Middle East and among the countries of the greater Middle East;

(2) reducing tariff and nontariff barriers and other obstacles to trade between the United States and the countries of the greater Middle East and among the countries of the greater Middle East;

(3) strengthening and expanding the private sector and accelerating the rate of job creation in the countries of the greater Middle East;

(4) focusing on countries committed to the rule of law, economic reform, political liberalization, respect for human rights, and the eradication of poverty;

(5) facilitating the development of civil societies and political freedom in the countries of the greater Middle East;

(6) promoting sustainable development, and protecting and preserving the environment in a manner consistent with economic development; and

(7) encouraging the countries of the greater Middle East to diversify their economies, implement domestic economic reforms, open to trade, and adopt anticorruption measures, including through accession to the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

SEC. 4. DESIGNATION OF ELIGIBLE COUNTRIES.

(a) IN GENERAL.—The President is authorized to designate any country listed in subsection (c) as a beneficiary country if the President determines that the country—

(1) has established, or is making continual progress toward establishing—

(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

(B) the rule of law and the right to due process, a fair trial, and equal protection under the law;

(C) political pluralism, a climate free of political intimidation and restrictions on peaceful political activity, and democratic elections that meet international standards of fairness, transparency, and participation;

(D) the elimination of barriers to United States trade and investment, including by—

(i) providing national treatment and measures to create an environment conducive to domestic and foreign investment;

(ii) protecting intellectual property; and

(iii) resolving bilateral trade and investment disputes;

(E) economic policies that reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;

(F) a system to combat corruption and bribery, such as signing and implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

(G) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work; and

(H) policies that provide a high level of environmental protection;

(2) does not engage in activities that undermine United States national security or foreign policy interests, and supports a peaceful resolution of the Israeli-Palestinian conflict;

(3) is a signatory of the United Nations Declaration of Human Rights, does not engage in gross violations of internationally recognized human rights, and is making continuing and verifiable progress on the protection of internationally recognized human rights, including freedom of speech and press, freedom of peaceful assembly and association, and freedom of religion;

(4) is not listed by the United States Department of State as a state sponsor of terrorism and cooperates fully in international efforts to combat terrorism;

(5) does not participate in the primary, secondary, or tertiary economic boycott of Israel; and

(6) otherwise meets the eligibility criteria set forth in section 502(b)(2) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)), other than section 502(b)(2)(B).

(b) CONTINUING COMPLIANCE.—If the President determines that a designated beneficiary country no longer meets the requirements described in subsection (a), the President shall terminate the designation of the country made pursuant to subsection (a) and inform Congress of the President's determination and the reasons therefor.

(c) COUNTRIES ELIGIBLE FOR DESIGNATION.—In designating countries as beneficiary countries under this Act, the President shall consider only the following countries of the greater Middle East or their successor political entities:

(1) Afghanistan.
(2) Algeria.
(3) Azerbaijan.
(4) Bahrain.
(5) Bangladesh.
(6) Egypt.
(7) Iraq.
(8) Kuwait.
(9) Lebanon.
(10) Morocco.
(11) Oman.
(12) Pakistan.
(13) Qatar.
(14) Saudi Arabia.
(15) Tunisia.
(16) Turkey.
(17) United Arab Emirates.
(18) Yemen.

(d) THE PALESTINIAN AUTHORITY.—The President is also authorized to designate the Palestinian Authority or its successor political entity as a beneficiary political entity which, if so designated, shall be accorded benefits under this Act as if it were a beneficiary country, if the President determines that the Palestinian Authority—

(1) satisfies the conditions of subsection (a)(1) and (2);

(2) does not participate in acts of terrorism, and takes active measures to combat terrorism;

(3) cooperates fully in international efforts to combat terrorism;

(4) does not engage in gross violations of internationally recognized human rights, and is making continuing and verifiable progress on the protection of internationally recognized human rights, including freedom of speech and the press, freedom of peaceful assembly and association, and freedom of religion; and

(5) accepts Israel's right to exist in peace within secure borders.

SEC. 5. DESIGNATION OF ELIGIBLE ARTICLES.

(a) ELIGIBLE ARTICLES.—Except as provided in sections 503(b)(2) and (3) of the Trade Act of 1974 (19 U.S.C. 2463(b)(2) and (3)), the President is authorized to designate articles as eligible for duty-free treatment from all beneficiary countries for purposes of this Act by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (c).

(b) RULES OF ORIGIN.—

(1) GENERAL RULE.—The duty-free treatment provided under this Act shall apply to any eligible article which is the growth, product, or manufacture of 1 or more beneficiary countries if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of—

(i) the cost or value of the materials produced in 1 or more beneficiary countries, plus

(ii) the direct cost of processing operations performed in such beneficiary country or countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(2) ADDITIONAL COUNTRIES.—For purposes of the rules of origin in paragraph (1) and the regulations prescribed pursuant to paragraph (4), the term ''beneficiary country'' includes Israel and Jordan.

(3) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary country by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(4) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection, including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this Act, an article—

(A) must be wholly the growth, product, or manufacture of 1 or more beneficiary countries, including Israel and Jordan; or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in 1 or more beneficiary countries, including Israel and Jordan.

(c) INTERNATIONAL TRADE COMMISSION ADVICE.—Before designating an article as an eligible article under subsection (a), the President shall publish in the Federal Register and furnish the International Trade Commission with a list of articles that may be considered for designation as eligible articles for purposes of this Act. The President shall comply with the provisions of sections 131, 132, 133, and 134 of the Trade Act of 1974 as if an action under this Act were an action taken under section 123 of the Trade Act of 1974 to carry out a trade agreement entered into under section 123.

SEC. 6. UNITED STATES-MIDDLE EAST TRADE AND ECONOMIC COOPERATION FORUM.

(a) DECLARATION OF POLICY.—The President shall convene annual high-level meetings among appropriate officials of the United States Government, officials of the governments of eligible beneficiary countries, and officials of the Governments of Israel and Jordan in order to foster close economic ties between the United States and the countries of the greater Middle East.

(b) ESTABLISHMENT.—Not later than 12 months after the date of enactment of this Act, the President, after consulting with Congress and the governments concerned, shall establish a United States-Middle East Trade and Economic Cooperation Forum (in this section referred to as the ''Forum'').

(c) REQUIREMENTS.—In creating the Forum, the President shall meet the following requirements:

(1) The President shall direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with their counterparts from the governments of designated beneficiary countries, and those countries and political entities listed in section 4 (c) and (d) that the President determines are taking substantial positive steps toward meeting the eligibility requirements in section 4. The purpose of the meeting shall be to discuss expanding trade and investment relations between the United States and the countries of the greater Middle East and the implementation of this Act including encouraging joint ventures between small and large businesses. The President shall also direct the Secretaries and the United States Trade Representative to invite to the meeting representatives from appropriate organizations and government officials from countries and political entities in the greater Middle East.

(2)(A) The President, in consultation with Congress, shall encourage United States nongovernmental organizations to host annual meetings with nongovernmental organizations from the countries and political entities of the greater Middle East in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(B) The President, in consultation with Congress, shall encourage United States representatives of the private sector to host annual meetings with representatives of the private sector from the countries and political entities of the greater Middle East in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(3) The President shall, to the extent practicable, meet with the heads of governments of designated beneficiary countries, and those countries and political entities listed in section 4 (c) and (d) that the President determines are taking substantial positive steps toward meeting the eligibility requirements in section 4, not less than once every 2 years for the purpose of discussing the issues described in paragraph (1). The first such meeting should take place not later than 12 months after the date of enactment of this Act.

(d) DISSEMINATION OF INFORMATION BY USIS.—In order to assist in carrying out the purposes of the Forum, the United States Information Service shall disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this Act.

SEC. 7. FREE TRADE AGREEMENTS WITH COUNTRIES OR POLITICAL ENTITIES IN THE GREATER MIDDLE EAST.

(a) DECLARATION OF POLICY.—Congress declares that bilateral free trade agreements should be negotiated, where feasible, with interested countries or political entities in the greater Middle East, in order to serve as the catalyst for increasing trade between the United States and the greater Middle East and increasing private sector investment in the greater Middle East.

(b) ELIGIBILITY.—Any country or political entity that desires to negotiate a bilateral free trade agreement with the United States shall be a member of the World Trade Organization or be working diligently toward membership and shall satisfy the criteria in section 4(a) of this Act.

(c) PLAN REQUIREMENT.—

(1) IN GENERAL.—The President, taking into account the willingness of the governments of the beneficiary countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into 1 or more trade agreements with interested beneficiary countries.

(2) ELEMENTS OF PLAN.—The plan shall include the following:

(A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and the relevant beneficiary countries with respect to the applicable free trade agreement or agreements.

(C) A mutually agreed-upon timetable for the negotiations.

(D) Subject matter anticipated to be covered by the negotiations and United States laws, programs, and policies, as well as the laws of participating eligible countries of the greater Middle East and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(E) Procedures to ensure the following:

(i) Adequate consultation with Congress and the private sector during the negotiations.

(ii) Consultation with Congress regarding all matters relating to implementation of the agreement or agreements.

(iii) Approval by Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant governments of the greater Middle East during the negotiation of the agreement or agreements.

(d) REPORTING REQUIREMENT.—Not later than 12 months after the date of enactment of this Act, the President shall prepare and transmit to Congress a report containing the plan developed pursuant to subsection (c).

SEC. 8. REPORTING REQUIREMENT.

(a) IN GENERAL.—The President shall monitor, review, and prepare a report annually on the progress of each country and political entity listed in section 4 (c) and (d) in meeting the requirements described in section 4(a) in order to determine the current or potential eligibility of each country or political entity to be designated as a beneficiary country under this Act. The report shall also include a comprehensive discussion of the implementation of this Act and an analysis of the trade and investment policy of the United States with respect to the countries and political entities listed in section 4 (c) and (d). To the extent that any subject matter required by the report is included in another report submitted by the President, the report required by this section may reference the other report.

(b) TIME FOR SUBMITTING REPORT.—The President shall submit the report described in subsection (a) to Congress not later than 1 year after the date of enactment of this Act, and annually thereafter through 2011.

SEC. 9. PRESERVATION OF BENEFITS OF UNITED STATES-ISRAEL AND UNITED STATES-JORDAN FREE TRADE AGREEMENTS.

Nothing in this Act shall be deemed to nullify or impair any right or benefit accorded either to Israel or to Jordan under the existing trade agreements with the United States.

SEC. 10. TERMINATION OF PREFERENTIAL TREATMENT.

No duty-free treatment or other preferential treatment extended to beneficiary countries under this Act shall remain in effect after December 31, 2011.

Mr. MCCAIN. Mr. President, today I join Senator BAUCUS in introducing the Middle East Trade and Engagement Act of 2003. Our legislation would permit eligible countries in the greater Middle East to gain greater access to American markets through the duty-free treatment of certain exports, and ultimately to negotiate free trade agreements with the United States. It would condition broader trade relations on fundamental political and economic reforms, cooperation in the fight against terrorism, and support for the Israeli-Palestinian peace process, among other issues, in order to promote liberalization and reform across the Arab and Muslim worlds.

Free trade is a powerful tool for opening up closed societies, if leaders in the greater Middle East are willing to make necessary and overdue political and economic reforms. It is past time for nations in the region to join the global economy, and for rulers to lead increasingly restive populations in the direction of democracy and free markets.

Today, the countries of the Middle East account for a small percentage of non-energy sector trade for the United States. With the exception of oil, most Arab nations barely trade with each other, much less with the rest of the world, and many still maintain a hostile economic boycott on Israel—policies that isolate the Middle East from the global economy and perpetuate conflict instead of building prosperity. The wave of free-market reform and democratization that swept Europe, Latin America, Asia, and parts of Africa in the 1980s and 1990s has left most of the Middle East untouched and unchanged.

America's interest in economic opening and political liberalization in the region requires a new level of engagement with the countries of the greater Middle East, premised on the acceleration and active implementation of a host of reforms without which prosperity and democracy are not possible. Our legislation would tie preferential trade access to American markets to progress towards adoption of these reforms, as well as meaningful progress on human rights protections, decisive movement towards democracy, full cooperation in the war on terrorism, and an end to the primary, secondary, and tertiary economic boycott of Israel.

Our bill is modeled on the success of the Andean Trade Preferences Act and the African Growth and Opportunity Act. Ideally, enactment of the bill we are introducing today would create a regime of duty-free trade in a number of goods from the greater Middle East. Such a trade preference program would encourage and often require eligible nations to undertake the kind of significant economic reforms that ultimately lead to free trade agreements, as President Bush has called for and which we support.

The Andean Trade Preferences Act was created to expand the economies of Bolivia, Colombia, Ecuador, and Peru. By granting duty-free and reduced rate treatment to various products from these nations, we took action to strengthen the fragile economies of the region, expand their export bases, and provide Andean farmers and workers with legitimate employment outside of the drug trade. It has worked. The trade agreement created new industries in the region outside of the drug trade and expanded the economies of the region which helped to create legitimate jobs. We foresee similar effects from this legislation on parts of the Middle East, if leaders have the courage and vision to complement progress on trade with internal political and economic reforms.

Reform in the Arab and Muslim worlds requires not just greater trade but accelerated political and economic liberalization, including respect for fundamental human freedom. It is my hope that the spirit and effect of our legislation will help move countries of the greater Middle East in that direction.

By Mrs. BOXER (for herself and Mr. BIDEN):

S. 1123. A bill to provide enhanced Federal enforcement and assistance in preventing and prosecuting crimes of violence against children; to the Committee on the Judiciary.

Mrs. BOXER. Mr. President, today I am introducing the Violence Against Children Act of 2003. The legislation, modeled on the successful Violence Against Women Act, will both toughen Federal penalties for crimes against children and assist local communities in their efforts to fight violence against children. It has been endorsed by over 100 prominent individuals and organizations.

We were all horrified by the tragic murders of Samantha Runion and Danielle van Dam. We were horrified by the kidnaping of Elizabeth Smart, Erica Pratt, and Nichole Taylor Timmons who were snatched right from their homes. We were horrified by the kidnaping and rape of Jacqueline Marris and Tamara Brooks.

But there are thousands more stories we do not hear—thousands of children who each year are victims of sexual molestation, kidnaping, murder—thousands of children whose stories do not make the nightly news—thousands of children and thousands of families who suffer in silence and often without help.

In fact, 71 percent of all sex crime victims are under the age of 18—and 38 percent of all kidnaping victims are under age 18. Those between the ages of 12 and 17 are over two times more likely to be victims of a violent crime than adults. And as alarming as those statistics are, according to a study published in 1999, only 28 percent of all crimes against children are actually reported.

While we are horrified by these and other stories, we must not let them paralyze us. We must do for children what we have done on behalf of women, by changing attitudes and changing the culture. The Violence Against Children Act would create a new Federal criminal statute for willfully injuring or attempting to injure any person under the age of 18. Those who injure a child or try to will be imprisoned for up to 10 years and fined. And if the crime is kidnaping, aggravated sexual abuse, or murder, the maximum penalty will be life in prison.

In addition to enhanced penalties for crimes against children, the Violence Against Children Act provides Federal assistance—including technical, forensic, and prosecutorial assistance—to any State, Indian tribe, or local government that requests assistance with a violent felony against a child. The bill also establishes a grant program to help local police and prosecutors to strengthen effective law enforcement and prosecution for these crimes.

This Act builds upon the Protect Act, recently signed into law, by requiring that States have an Amber Alert system to help locate missing children in order to qualify for the local law enforcement grants. In addition, to cut down on the number of abused and neglected children, states are required to have a Safe Haven program that would allow parents to leave newborn babies in hospital emergency rooms, anonymously and with no fear of penalty. These requirements will ensure that states take action to improve systems that can protect our Nation's children.

I am pleased to be joined in this effort by Senator BIDEN, who I teamed up with over a decade ago in introducing the Violence Against Women Act. And Representative MILLENDER-MCDONALD is the sponsor of the House bill.

This is a critical issue to safeguard our children and youth nationwide. I urge my colleagues to cosponsor this bill.

I ask unanimous consent to print in the RECORD a section-by-section summary of the bill and a list of those who have endorsed it.

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

VIOLENCE AGAINST CHILDREN ACT—SECTION-BY-SECTION SUMMARY

Section 1. Short title

Names the Act the ''Violence Against Children Act of 2003.''

Section 2. Findings

Includes findings on the extent of crimes against children and the effect of those crimes against children. Also finds that failure to pay child support is a form of neglect.

TITLE I—ENHANCED FEDERAL ROLE IN CRIMES AGAINST CHILDREN

Section 101. Enhanced penalties

(1) New Criminal Statute

Creates a new federal criminal statute for willfully injuring or attempting to injure any person under the age of 18. Establishes a maximum penalty of 10 years in prison and a fine. If death of the child results from the crime or if the crime is kidnapping, an attempt to kidnap, aggravated sexual abuse, an attempt to commit aggravated sexual abuse, or an attempt to kill, the maximum penalty is a fine and life in prison.

For constitutional purposes, the criminal statute applies only under certain circumstances: (1) if the defendant or the victim engages in interstate or foreign commerce, including crossing a state line, during the course of or as the result of committing the crime; or (2) the defendant uses a firearm or other weapon that has traveled in interstate or foreign commerce.

(2) Enhanced Penalties of Existing Crimes

Directs the United States Sentencing Commission to provide enhanced penalties for existing federal crimes when the victim is under the age of 18.

(3) Review of State Laws

Directs the General Accounting Office, within 6 months, to review state criminal penalties for crimes against children and state laws regarding enhanced penalties when the victim of a crime is under the age of 18.

Section 102. Enhanced assistance for criminal investigations and prosecutions by state and local law enforcement officials

Requires the Attorney General to provide federal assistance—including technical, forensic, and prosecutorial assistance—to any state, Indian tribe, or local government that requests assistance with a violent felony against a child.

If the Attorney General determines that there are insufficient resources to fulfill all such requests, priority is given to (a) requests that involve offenders who have committed crimes in more than one state; and (b) rural areas that do not have sufficient resources to investigate and prosecute the crime.

TITLE II—GRANT PROGRAMS

Section 201. State and local law enforcement assistance grants

Creates a new grant program to assist states, Indian tribes, and local governments to strengthen law enforcement and prosecution of crimes against children. Grants could be used for a variety of purposes, including: (a) training law enforcement officers, prosecutors, and judges; (b) developing or expanding law enforcement units or courts that specifically target crimes against children; (c) developing policies to prevent, identify, and respond to crimes against children; (d) establishing data collection and communication systems to link police, prosecutors, and courts in helping to track arrests, prosecutions, and convictions of crimes against children; and (e) establishing and strengthening collaboration and communication between law enforcement and child services agencies.

To be eligible for funds, a state must have in place an AMBER Alert system (see section 301) and must use, or be in the process of using, the National Incident-Based Reporting System (see section 302).

Authorizes $25 million for each of the next five years. Federal funds must supplement, not supplant, non-federal funds.

Section 202. Education, prevention, and victims' assistance grants

Creates a new grant program to assist states, Indian tribes, local governments, and nongovernmental organizations to provide education, prevention, intervention, and victims' assistance services regarding crimes against children. Grants could be used for a variety of purposes, including: (a) hotlines; (b) training of professionals; (c) informational and educational services and materials; (d) intervention services; (e) emergency medical treatment; (f) counseling to child victims and their families; and (g) increasing the number of mental health professionals that specialize in child victims.

To be eligible for funds, a state must have a Safe Haven program (see section 303).

Authorizes $25 million for each of the next five years. Federal funds must supplement, not supplant, non-federal funds.

TITLE III—NATIONWIDE PROGRAMS

Section 301. Nationwide AMBER Alert

Requires each state receiving a law enforcement assistance grant (see section 201) to have in place a state-wide AMBER Alert communications network for child abduction cases.

This system must be in place within 3 years after the date of enactment of the Violence Against Children Act.

Section 302. Improved statistical gathering

Requires each state receiving a law enforcement assistance grant (see section 201) to use, or to be in the process of testing or developing protocols to use, the National Incident-Based Reporting System. (This program provides the most detailed statistical profile of crimes in the United States, including by the age of the victims. However, it is a voluntary program, and less than half the states currently participate.)

Section 303. National safe haven

Requires each state receiving a victims' assistance grant (see section 202) to have a Safe Haven program, which permits a parent to leave a newborn baby with a medically-trained employee of a hospital emergency room anonymously without penalty. The state program must have a mechanism to voluntarily collect information about the medical history of the family, must require a search of the child in the state and federal missing person databases, and must include a plan to publicize the state program.

To ensure that an abused or intentionally harmed newborn is not left at a hospital so a parent can escape responsibility, a state *may* have a limited exception to the Safe Haven program in those circumstances.

Section 304. Improved child protection services programs

Directs each state, within 6 months, to report to the Department of Health and Human Services on its child protective services program, including how the state maintains records, keeps track of the children under its care, and verifies the well-being of the children.

Directs the General Accounting Office, within 6 months, to review state child protective services practices, including how states keep track of the children under their care, and to report to Congress on any legislative changes needed to improve the program.

TITLE IV—CHILD SUPPORT ENFORCEMENT

Section 401. Child support bad debt deduction

Expresses the sense of the Senate that Congress should extend the existing federal tax law on bad debt to nonpayment of child support. That is, those who do not receive the child support they are owed should be able to deduct that from their federal income taxes; those who fail to pay ordered

child support should be required to add the unpaid amount to their income and pay federal taxes on it.

VIOLENCE AGAINST CHILDREN ACT LETTERS OF SUPPORT

NATIONAL ORGANIZATIONS/INDIVIDUALS

KlaasKids Foundation (Marc Klaas).
Children's Defense Fund.
National Children's Alliance.
American Academy of Child and Adolescent Psychiatry.
American Humane Association.
Crimes Against Children Research Center.
Dr. Laura Schlessinger.

CALIFORNIA LAW ENFORCEMENT

California Police Activities Leagues.
Auburn Chief of Police.
Butte County Sheriff-Coroner.
Chico Chief of Police.
Colusa County Sheriff-Coroner.
Fairfield Chief of Police.
Glenn County Sheriff-Coroner.
Kern County Sheriff-Coroner.
Lassen County Sheriff-Coroner.
Long Beach Chief of Police.
Los Angeles Chief of Police.
Manteca Chief of Police.
Marin County Sheriff.
Marysville Chief of Police.
Napa Chief of Police.
Oxnard Chief of Police.
Redding Chief of Police.
Roseville Chief of Police.
Sacramento Chief of Police.
Sacramento County Sheriff.
San Diego Chief of Police.
San Mateo Chief of Police.
San Mateo County Sheriff.
Santa Ana Chief of Police.
Santa Clara Chief of Police.
Shasta County Sheriff.
Stanislaus County Sheriff-Coroner.
Stockton Chief of Police.
Woodland Chief of Police.
Yolo County Sheriff.
Yuba City Chief of Police.

OTHER LAW ENFORCEMENT

Pierce County (WA) Sheriff.

CALIFORNIA PUBLIC OFFICIALS

Bill Lockyer, California Attorney General.
Jack O'Connell, California State Superintendent of Public Instruction.
Steve Westly, California State Controller.
John L. Burton, President Pro Tempore, California State Senate.
James Hahn, Mayor, Los Angeles.
Jan Scully, Sacramento County District Attorney.
Chula Vista City Council (Stephen C. Padilla, Mayor).
Santa Rosa City Council (Sharon Wright Mayor).
Ed Henderson, Mayor, Napa.
Steve Cooley, Los Angeles County District Attorney.
Pete Knoll, Siskiyou County District Attorney.
Claire Mack, Mayor, San Mateo.
Karin MacMillan, Mayor, Fairfield.
John A. Russo, Oakland City Attorney.
Alan D. Bersin, San Diego Superintendent of Public Instruction.
City of Santa Clara (Patricia M. Mahan, Mayor).

CALIFORNIA ORGANIZATIONS

Family Violence Law Center (Oakland).
Children's Interview Center (San Pablo).
Child Abuse Prevention Council of Sacramento.
Latino Coalition for a Healthy California.
Healthy Children's Collaborative (Stockton).
Sacramento Pediatric Society.
Sacramento County Children's Coalition.
Didi Hirsch Community Mental Health Center (Culver City).
Prevent Child Abuse—California.
Fresno Council on Child Abuse Prevention.
Rancho Cordova Neighborhood Center.
The Mutual Assistance Network of Del Paso Heights.
FamiliesFirst (Davis).
La Familia Counseling Center (Sacramento).
Orange County Child Advocacy Center.
Shasta County Child Abuse Prevention Coordinating Council.
Bienvenidos Family Services (Los Angeles).
Break the Cycle (Los Angeles).
SHEILDS For Families (Los Angeles).
South Central Prevention Coalition (Los Angeles).
Violence Prevention Coalition of Greater Los Angeles.
Prototypes (Culver City).
Five Acres Boys' and Girls' Aid Society of Los Angeles.
Heart of Los Angeles Youth.
Jewish Family Service of Los Angeles.
Marjaree Mason Center (Fresno).
Phoenix Houses of California.
Boys & Girls Club of San Fernando Valley.
Community Violence Solutions.
California Coalition for Youth.
The Jeffrey Foundation (Los Angeles).
The Center for the Advancement of Nonviolence (Los Angeles).
The Community Clinic Association of Los Angeles County.
A Place Called Home (Los Angeles).
LA's Best.
Prevent Child Abuse, Tuolumne County.
Child Advocacy Center, San Joaquin County.
Multi-Disciplinary Interview Center, Placer County District Attorney's Office.
YMCA Youth and Family Services, San Diego.
Advokids (Core Madera).
Northridge Hospital Medical Center.
Holmes & Holmes Attorneys at Law (Glendale).
San Fernando Valley Interfaith Council.
Chicano Youth Center (Fresno).
LA Family Housing.
Child Abuse Listening & Mediation (Santa Barbara).
Department of Children and Family Services, Alameda County.

OTHER ORGANIZATIONS

Children's Advocacy Center of Delaware.
Friends of the Children's Justice Center of West Hawaii.
Friends of the Children's Justice Center of East Hawaii.
Caring House (Iron Mountain, MI).
Garrett County Family Violence Coalition (Oakland, MD).
Dove Center (Oakland, MD).
Logan County Children's Services (Bellefontaine, OH).
CornerHouse (Minneapolis, MN).
Children's Advocacy Center (Pittsburgh, KS).
Prevent Child Abuse Illinois.
Children's Advocacy Center (Chicago).

Mr. BIDEN. Mr. President, I rise today to help introduce a bill with my good friend from California that will bring new and needed tools to the battle to end violence against children in America, whether it takes place inside the home or out on the street. Today, Senator BOXER and I are introducing the Violence Against Children Act, VACA, which provides a comprehensive approach to prevent crimes against children, treat child victims, and prosecute those who harm our Nation's children.

In 1994, this body passed a piece of legislation that I authored, the Violence Against Women Act. When we passed this landmark legislation, we said as a Congress, and as a Nation as a whole, that domestic violence is not a family problem to be dealt with quietly behind the scenes, but a national crisis in need of a coordinated response from law enforcement, the courts and the medical community. Backed by almost one and half billion dollars of Federal funds, the Violence Against Women Act spurred a sea change on the Federal, State and local levels in how police, prosecutors, judges, medical personnel and others, process and handle cases of domestic abuse, sexual assault and stalking. Most importantly, the Violence Against Women Act also made it clear that victims of domestic violence and sexual assault were, in fact, victims: Victims who deserved the full extend of this Nation's medical and legal resources. The Violence Against Children Act, offered by Senator BOXER and myself today, is designed to bring this same type of concentered focus and coordinated response to end all child abuse, the most heinous and incomprehensible form of violence against the most vulnerable people in our lives.

Last year in my state of Delaware there were 1,073 substantiated cases of child abuse and neglect—46 percent were cases of neglect, 31 percent were cases of abuse and 12 percent were cases of sexual abuse. Nationally, 3.9 million of the nation's 22.3 million children between the ages of 12 and 17 have been seriously physically assaulted. One in three girls and one in five boys are sexually abused before the age of 18. One study recently reported that in 2000, the homicide rate for U.S. infants is almost equal to the murder rate of teens. As stunning as these numbers are, we should be aware that these numbers are not the totals. Like incidents of domestic violence, we know that violence against children is under-reported. We also know that violence against kids cuts across all lines—it happens to children of doctors and lawyers, not just to poor children. We must do more to protect our children, and with the Violence Against Children Act we can.

Designed to be a comprehensive measure, the Violence Against Children Act will fight the battle against child abuse on a number of fronts: by providing states with new resources, law enforcement with additional tools and families with more places to turn to for help. What specifically the legislation do? The Violence Against Children Act has three major provisions; 1. it deters crime by toughening Federal criminal penalties for crimes against children; 2. it requires the Federal Government to provide investigative, forensic and prosecutorial assistance to states working on cases of violent crimes against children; and 3. it authorizes two new grant programs—one

aimed at providing more resources to state and local law enforcement for training, creating new courts and enforcement units focused solely on child crimes, and a second grant program for local governments and nonprofit organizations to provide emergency medical treatment and counseling for child victims, to increase the number of mental health professionals who specialize in child victims, and to establish child abuse and crime prevention programs.

The Violence Against Children Act also encourages State and localities to take affirmative steps to fight crimes against children by conditioning receipt of grant monies on three points: 1. creating a statewide Amber Alert system to alert the public immediately after a child abduction has been discovered; 2. creating Safe Haven programs which allow parents to leave newborn babies for whom they cannot care in hospital emergency room anonymously and without fear of penalty; and 3. improving data gathering so that police, treatment providers and policy makers get a clearer view of the circumstances surrounding child crimes. We need to stop nibbling around the edges with piecemeal legislation that tackles just one aspect of child abuse or child exploitation. The Violence Against Children Act takes into account the larger landscape and provides wide-reaching tools and resources. I feel certain that once my colleagues become aware of this effort, this bill will gather broad and bipartisan support.

Recently the Nation was stunned and relieved at the return of Elizabeth Smart to her parents Ed and Lois. As a father and grandfather my heart went out to them. I don't want to read about these types of cases anymore. My State of Delaware has an Amber Alert system in place. Delaware has a Safe Haven law. Not every State has these critical tools at their disposal. Senator BOXER and I are introducing the Violence Against Children Act for a reason. We must do everything that we can to prevent crimes against children and, if God forbid they do occur, we must do everything we can to treat the victims and their families and prosecute their perpetrators to the fullest extent of the law. As one child advocates succinctly said, ''a civilized society says children matter.'' The Violence Against Children Act says loud and clear, kids matter.

By Ms. MIKULSKI:

S. 1124. A bill to amend title 38, United States Code, to increase burial benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Ms. MIKULSKI. Mr. President, I rise to introduce the Veterans Burial Benefits Improvement Act.

During the upcoming Memorial Day holiday, we will honor our U.S. soldiers who died in the name of their country. These service men and women are America's true heroes and on this day we pay tribute to their courage and sacrifice. Some have given their lives for our country. All have given their time and dedication to ensure our country remains the land of the free and the home of the brave. We owe a special debt of gratitude to each and every one of them.

This holiday serves as an important reminder that our nation has a sacred commitment to honor the promises made to soldiers when they signed up to serve our country. As the Ranking Member of the Senate Appropriations Subcommittee that funds veterans programs, I fight hard to make sure promises made to our service men and women are promises kept. These promises include access to quality, affordable health care and a proper burial for our veterans.

I am deeply concerned that burial benefits for the families of our wounded or disabled veterans have not kept up with inflation and rising funeral costs. We are losing over 1,000 World War II veterans each day, but Congress has failed to increase veterans' burial benefits to keep up with rising costs and inflation. While these benefits were never intended to cover the full costs of burial, they now pay for only a fraction of what they covered in 1973, when the Federal Government first started paying burial benefits for our veterans.

I want to thank my colleagues on the Veterans' Affairs Committee for working with me in the 107th Congress. Together, we were able to increase modestly the service-connected benefit from $1,500 to $2,000, and the plot allowance from $150 to $300. While I believe these increases are a step in the right direction, they are not a substitute for the amounts included in my bill.

That's why I am again introducing the Veterans Burial Benefits Improvement Act. This bill will increase burial benefits to cover the same percentage of funeral costs as they did in 1973. It will also provide for these benefits to be increased annually to keep up with inflation.

In 1973, the service-connected benefit paid for 72 percent of veterans' funeral costs. Today, this benefit covers just 39 percent of funeral costs. My bill will increase the service-connected benefit from $2,000 to $3,713, bringing it back up to the original 72 percent level.

In 1973, the non-service connected benefit paid for 22 percent of funeral costs. It has not been increased since 1978, and today it covers just 6 percent of funeral costs. My bill will increase the non-service connected benefit from $300 to $1,135, bringing it back up to the original 22 percent level.

In 1973, the plot allowance paid for 13 percent of veterans' funeral costs. Yet it now covers just 3 percent of funeral costs. My bill will increase the plot allowance from $300 to $670, bringing it back up to the original 13 percent level.

Finally, the Veterans Burial Benefits Improvement Act will also ensure that these burial benefits are adjusted for inflation annually, so veterans won't have to fight this fight again.

This legislation is just one way to honor our Nation's service men and women. I want to thank the millions of veterans, Marylanders, and people across the nation for their patriotism, devotion, and commitment to honoring the true meaning of Memorial Day. U.S. soldiers from every generation have shared in the duty of defending America and protecting our freedom. For these sacrifices, America is eternally grateful.

I ask unanimous consent that the text of this legislation, and letters from several veterans' advocacy groups supporting it, be printed in the RECORD.

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

S. 1124

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 ''Veterans Burial Benefits Improvement Act of 2003''.

SEC. 2. INCREASE IN BURIAL BENEFITS FOR VETERANS.

(a) BURIAL AND FUNERAL EXPENSES.—(1) Section 2302(a) of title 38, United States Code, is amended by striking ''$300'' and inserting ''$1,135 (as increased from time to time under section 2309 of this title)''.

(2) Section 2303(a)(1)(A) of that title is amended by striking ''$300'' and inserting ''$1,135 (as increased from time to time under section 2309 of this title)''.

(3) Section 2307 of that title is amended by striking ''$2,000,'' and inserting ''$3,712 (as increased from time to time under section 2309 of this title),''.

(b) PLOT ALLOWANCE.—Section 2303(b) of that title is amended—

(1) by striking ''$300'' the first place it and inserting ''$670 (as increased from time to time under section 2309 of this title)''; and

(2) by striking ''$300'' the second place it appears and inserting ''$670 (as so increased)''.

(c) ANNUAL ADJUSTMENT.—(1) Chapter 23 of that title is amended by adding at the end the following new section:

''§ 2309. Annual adjustment of amounts of burial benefits

''With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the burial and funeral expenses under sections 2302(a), 2303(a), and 2307 of this title, and in the plot allowance under section 2303(b) of this title, equal to the percentage by which—

''(1) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

''(2) the Consumer Price Index for the 12-month period preceding the 12-month period described in paragraph (1).''.

(2) The table of sections at the beginning of that chapter is amended by adding at the end the following new item:

''2309. Annual adjustment of amounts of burial benefits.''.

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall apply to deaths occurring on or after the date of the enactment of this Act.

(2) No adjustments shall be made under section 2309 of title 38, United States Code,

as added by subsection (c), for fiscal year 2004.

MAY 15, 2003.

Hon. BARBARA MIKULSKI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MIKULSKI: As Memorial Day 2003 approaches, the co-authors of The Independent Budget would like to express our strong support for your legislation which would revitalize veterans' burial benefits and honor those who have sacrificed for this country. This legislation would provide a meaningful increase in burial benefits that is long overdue.

Veterans' burial benefits have seriously eroded in value over the years. The proposed increase would cover the same percentage of veterans' burial costs that they covered in 1973 when they were initiated. The annual adjustment to cover the costs of inflation is also something that The Independent Budget has argued in favor of in the past.

The Independent Budget produced by AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars fully supports the proposed adjustment of burial allowances to reflect the increases in burial costs. Clearly, it is time these benefits were raised to provide a more meaningful contribution to the costs of burial for veterans. We applaud your efforts to responsibly address this matter, and we appreciate your continued commitment to the men and women who have served this country and are continuing to do so even today.

Sincerely,

RICK JONES,
National Legislative Director, AMVETS.

RICHARD B. FULLER,
National Legislative Director, Paralyzed Veterans of America.

JOSEPH A. VIOLANTE,
National Legislative Director, Disabled American Veterans.

DENNNIS CULLINAN,
National Legislative Director, Veterans of Foreign Wars of the United States.

FLEET RESERVE ASSOCIATION,
Alexandria, VA, May 21, 2003.

Hon. BARBARA A. MIKULSKI,
U.S. Senate, Hart Building, Washington, DC.

DEAR SENATOR MIKULSKI: The Fleet Reserve Association (FRA) and its 135,000 members extend its strong support for the reintroduction of the Veterans Burial Benefits Improvement Act. FRA applauds your leadership on working on this important issue.

As it has for more than 79 years, FRA effectively represents the interests of Sea Services enlisted communities, and is committed to ensuring equitable compensation and benefits for active duty, reserve and retired personnel.

The FRA stands ready to assist you and your staff on the introduction of this important legislation.

Sincerely,

JOSEPH L. BARNES,
National Executive Secretary.

THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF VETERANS AFFAIRS, INC.,
May 20, 2003.

Senator BARBARA MIKULSKI,
Hart Senate Office Building, Wasington, DC.

DEAR SENATOR MIKULSKI: The National Association of State Directors of Veterans Affairs (NASDVA) is in strong support of the legislation you are proposing with regards to burial benefits for our Nation's deceased veterans, namely, ''The Veterans Burial Benefits Improvement Act of 2003.''

We recognize and thank you for your outstanding earlier work with regards to veterans' burial benefits, including authoring, introducing, and shepherding the Veterans Burial Benefits Improvement Act of 2001 through the legislative process. While it is regrettable that Congress declined to enact all of the much needed measures you proposed, your work did lead to important increases in the authorized allowance for burial and funeral expenses for deceased veterans. We appreciate and thank you for your introduction of this new legislation.

As you are aware, the 95th Congress enacted the State Cemeteries Grant as part of Public Law 95–476 in order to provide Federal assistance to the States to construct, expand, and improve State veterans' cemeteries. State veterans' cemeteries must be State-owned, and operated solely for the interment of eligible veterans and their dependents and/or spouses. Operational costs are paid by the States.

State veterans' cemeteries continue to provide a cost-effective supplement to the VA's National Cemetery System. However, Federal veterans' burial plot allowances currently offset the costs of operation of State veterans' cemeteries by only one-third of the total cost. Furthermore, the actual allowances have been increased only incrementally since the programs were first instituted in 1973, and the rate of reimbursement has fallen far short of increases in the actual costs of burial expenses and cemetery plots.

Your bill proposes an increase to $3,713 for the burial plot allowance for veterans who die as a direct result of a service-connected illness or injury. When first enacted in 1973, the amount of the benefit at that time covered 72 percent of the average burial expense at that time. Today, the current benefit of $2,000 covers just 39 percent of those costs. Your earlier work helped to provide a much-needed increase to the current level, and we fully endorse your current efforts to ensure that the allowance is raised to at least the 1973 rate.

Your proposed legislation would also increase the amount of the burial benefit to $1,135 for the non-service-connected death of veterans in receipt of or otherwise found entitled to VA compensation, VA pension, and veterans who die while hospitalized or domiciled in a VA facility. The original 1973 benefit aided grieving families of deceased veterans by offsetting the cost of burial and funeral expenses by 22 percent. Today, the $300 that is provided covers just 6 percent of those costs.

Finally, your bill addresses the amount of funding provided for veterans' burial plot allowances. Your earlier work helped to provide a much-needed increase in that amount from $150 to $300. However, as you know, the current amount provides only 5.85 of the average cost of a burial plot, while the 1973 rate provided 13 percent. We are in strong support of your efforts to raise the allowance to its 1973 rate, at $670.

We are hopeful that Congress will see fit to fully enact the provisions of the Veterans Burial Benefits Improvement Act of 2003. We also that Congress will enact legislation to expand eligibility for the burial plot allowance for burial in State Veterans Cemeteries to include all honorably discharged veterans.

Thank you again for your efforts on behalf of our Nation's veterans. Your work is greatly appreciated.

Sincerely,

RAYMOND G. BOLAND,
President, NASDVA.

NATIONAL FUNERAL DIRECTORS ASSOCIATION,
Washington, DC, May 15, 2003.

Hon. BARBARA A. MIKULSKI,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR MIKULSKI: The National Funeral Directors Association (NFDA) represents more than 13,000 funeral homes in all 50 states. It is the leading funeral service organization in the United States, providing a national voice for the profession. The NPDA has been the premier organization chosen by top funeral directors for more than 120 years. NFDA members stand for credibility, ethics, excellence and trust.

The NFDA would like to thank you for your support of legislation to increase the amount paid for veteran funeral and burial expenses by the Department of Veterans Affairs (DVA), as well as to increase the amount for veteran plot allowances.

As you are well aware, the amount payable for veterans' memorial benefits has remained constant for many years in spite of inflation. Today, the average cost of a funeral, including casket, vault and cemetery charges is about $7,500. While funerals are still a modest expense when compared to the cost of other items an individual must purchase during the course of their lifetime, it is still a significant expense, particularly for those least able to afford it.

At a time of unimaginable grief, funeral directors deal with the families of service members who must plan for the funeral of their loved one. This process is never easy, but it is even more difficult when a family must plan a funeral within the current DVA funeral and burial expense limits.

The NFDA strongly supports legislation that recognizes the reality of the cost of a funeral and burial in 2003, and that seeks to help the families of veterans manage this expense.

Again, thank you for your interest and action on this important issue.

Sincercly,

WILLIAM A. ISOKAIT
NFDA Director of Advocacy.

By Mr. JOHNSON (for himself, Mr. KERRY, and Mr. SMITH):

S. 1126. A bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Mr. JOHNSON. Mr. President, today, I proudly join with Senator KERRY and Senator SMITH to reintroduce the Native American Small Business Development Act. This important legislation is designed to help American Indians, Alaska Natives, and Native Hawaiians to overcome barriers which inhibit business development and job creation. We greatly appreciate the support of the distinguished Senators who join us in sponsoring the legislation including Senators: AKAKA, BAUCUS, BINGAMAN, DASCHLE, CANTWELL, MURRAY, STABENOW.

The communities served this initiative represent some of the most traditionally isolated, disadvantaged, and underserved populations in our country. Despite the unique and persistent challenges to business development in these areas, many of the supportive services the federal government provides to entrepreneurs are not available in these distressed regions. The

Native American Small Business Development Act endeavors to develop and disseminate culturally tailored business assistance to assure Native American businesses may secure and sustain long-term success.

Native American communities continue to struggle with the social, economic, and cultural repercussions derived from persistent and pervasive poverty and unemployment. A recent report released by the U.S. Census Bureau, entitled Poverty in the United States: 2000, indicates that the ''three year average poverty rate for American Indians and Alaska Natives [from 1998–2000] was 25.9 percent. Higher than for any other race groups.''

The Native American Small Business Development Act is a deliberate effort to enhance the availability of technical assistance to support entrepreneurship in Indian Country. The communities served by this initiative represent some of the most traditionally isolated, disadvantaged, and underserved populations in our country.

Too many Native American communities are plagued by feelings of hopelessness and helplessness. We must work to transform this disappointment and discouragement into a sensible, workable, strategy for economic opportunity.

According to U.S. Department of Commerce census data, unemployment rates on Indian Lands in the continental United States range up to 80 percent compared to 5.6 percent for the U.S. as a whole. Census data also show that the poverty rate for Native Americans during the late 1990s was 26 percent, compared to the national average of 12 percent. In fact, overall, Native American household income is only three-quarters of the national average.

This disparity is particularly evident in my home state of South Dakota where Native Americans represent over 8 percent of the State's population. While the overall State economy is relatively strong with a low 3.1 percent unemployment rate, the Native American population continues to suffer. South Dakota counties with Indian Reservations are ranked by the U.S. Census Bureau as among the most impoverished in the United States.

Among the achievements included in the bill is the establishment of a statutory office within the U.S. Small Business Administration to focus on concerns specific to Native American populations. The Office of Native American Affairs will serve as an advocate in the SBA for the interests of Native Americans. In addition to administering the Native American Development Program, the Assistant Administrator will consult with Tribal Colleges, Tribal Governments, Alaska Native Corporations and Native Hawaiian Organizations to enhance the development and implementation of culturally specific approaches to support the growth and prosperity of Native American small businesses.

Furthermore, the Act creates the Native American Development Program to provide necessary business development assistance. These services are vital to establish and support small businesses. The Federal Government currently invests to provide these services in communities throughout the country. It is past time for these services to be integrated into our efforts to promote self-sufficiency and economic development in Indian Country.

In addition, we recognize that in order to remain competitive, businesses and entrepreneurs must be innovative and flexible to change. This legislation reflects the needs of businesses, tribes, and regional interests to pursue unique approaches that will complement local needs and improve the overall quality of services. Two pilot programs are integrated in this approach to promote new and creative solutions to assist American Indians to awaken economic opportunities in their communities.

We must strive to eliminate the impediments that stifle Native American entrepreneurs. By providing business planning services and technical assistance to potential and existing small businesses, we can unlock the capacity for individuals and families to pursue their dreams of business ownership. Not only will these efforts combat poverty and unemployment, but they will bring new services and opportunities to communities that enhance the quality of life for local families.

We must also work to improve access to investment capital to support economic and community development for Native Americans. As the Chairman of the Senate Banking Financial Institutions Subcommittee, I am conducting hearings last year to identify opportunities and techniques which may foster greater access to capital markets for Tribal and Native American entities.

Together, these initiatives will help to turn an important corner as we endeavor to enhance the livelihood of the First Americans.

I would like to thank Congressman UDALL for his leadership in the U.S. House of Representatives in bringing these issues to the forefront and for his cooperation on this historic legislation. I would like to thank Senator JOHN KERRY, the Ranking Member of the Senate Small Business and Entrepreneurship Committee, for his hard work on this legislation and his serious commitment to these critical issues. In addition, I would like to express my sincere appreciation to Senator SMITH for his strong support of this effort. We are grateful to the many cosponsors who join us in introducing the bill today.

I encourage the Senate to fully consider this historic legislation and to work expeditiously to enact it into law. The Native American Small Business Development Act will forge a more hopeful and prosperous future for Native American families and communities. By investing in adequate infrastructure and by making the appropriate tools available, we can empower individuals to pursue, achieve, and sustain economic opportunities that enrich their lives and their communities. The American dream will never be fully realized until it becomes a reality for all Americans. This legislation is critical to ensuring that economic growth and economic opportunity permeate the lives of Native American families.

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. 1126

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 ''Native American Small Business Development Act''.

SEC. 2. NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 36 as section 37; and

(2) by inserting after section 35 the following:

''SEC. 36. NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.

''(a) DEFINITIONS.—In this section—

''(1) the term 'Alaska Native' has the same meaning as the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b));

''(2) the term 'Alaska Native corporation' has the same meaning as the term 'Native Corporation' in section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m));

''(3) the term 'Assistant Administrator' means the Assistant Administrator of the Office of Native American Affairs established under subsection (b);

''(4) the terms 'center' and 'Native American business center' mean a center established under subsection (c);

''(5) the term 'Native American business development center' means an entity providing business development assistance to federally recognized tribes and Native Americans under a grant from the Minority Business Development Agency of the Department of Commerce;

''(6) the term 'Native American small business concern' means a small business concern that is owned and controlled by—

''(A) a member of an Indian tribe or tribal government;

''(B) an Alaska Native or Alaska Native corporation; or

''(C) a Native Hawaiian or Native Hawaiian organization;

''(7) the term 'Native Hawaiian' has the same meaning as in section 625 of the Older Americans Act of 1965 (42 U.S.C. 3057k);

''(8) the term 'Native Hawaiian organization' has the same meaning as in section 8(a)(15) of this Act;

''(9) the term 'tribal college' has the same meaning as the term 'tribally controlled college or university' has in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4));

''(10) the term 'tribal government' has the same meaning as the term 'Indian tribe' has in section 7501(a)(9) of title 31, United States Code; and

''(11) the term 'tribal lands' means all lands within the exterior boundaries of any Indian reservation.

''(b) OFFICE OF NATIVE AMERICAN AFFAIRS.—

''(1) ESTABLISHMENT.—There is established within the Administration the Office of Native American Affairs, which, under the direction of the Assistant Administrator, shall implement the Administration's programs for the development of business enterprises by Native Americans.

''(2) PURPOSE.—The purpose of the Office of Native American Affairs is to assist Native American entrepreneurs to—

''(A) start, operate, and grow small business concerns;

''(B) develop management and technical skills;

''(C) seek Federal procurement opportunities;

''(D) increase employment opportunities for Native Americans through the start and expansion of small business concerns; and

''(E) increase the access of Native Americans to capital markets.

''(3) ASSISTANT ADMINISTRATOR.—

''(A) APPOINTMENT.—The Administrator shall appoint a qualified individual to serve as Assistant Administrator of the Office of Native American Affairs in accordance with this paragraph.

''(B) QUALIFICATIONS.—The Assistant Administrator appointed under subparagraph (A) shall have—

''(i) knowledge of the Native American culture; and

''(ii) experience providing culturally tailored small business development assistance to Native Americans.

''(C) EMPLOYMENT STATUS.—The Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5, United States Code, and shall serve as a noncareer appointee, as defined in section 3132(a)(7) of title 5, United States Code.

''(D) RESPONSIBILITIES AND DUTIES.—The Assistant Administrator shall—

''(i) administer and manage the Native American Small Business Development program established under this section;

''(ii) recommend the annual administrative and program budgets for the Office of Native American Affairs;

''(iii) consult with Native American business centers in carrying out the program established under this section;

''(iv) recommend appropriate funding levels;

''(v) review the annual budgets submitted by each applicant for the Native American Small Business Development program;

''(vi) select applicants to participate in the program under this section;

''(vii) implement this section; and

''(viii) maintain a clearinghouse to provide for the dissemination and exchange of information between Native American business centers.

''(E) CONSULTATION REQUIREMENTS.—In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of—

''(i) Administration officials working in areas served by Native American business centers and Native American business development centers;

''(ii) the Bureau of Indian Affairs of the Department of the Interior;

''(iii) tribal governments;

''(iv) tribal colleges;

''(v) Alaska Native corporations; and

''(vi) Native Hawaiian organizations.

''(c) NATIVE AMERICAN SMALL BUSINESS DEVELOPMENT PROGRAM.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Administration, through the Office of Native American Affairs, shall provide financial assistance to tribal governments, tribal colleges, Native Hawaiian organizations, and Alaska Native corporations to create Native American business centers in accordance with this section.

''(B) USE OF FUNDS.—The financial and resource assistance provided under this subsection shall be used to overcome obstacles impeding the creation, development, and expansion of small business concerns, in accordance with this section, by—

''(i) reservation-based American Indians;

''(ii) Alaska Natives; and

''(iii) Native Hawaiians.

''(2) 5-YEAR PROJECTS.—

''(A) IN GENERAL.—Each Native American business center that receives assistance under paragraph (1)(A) shall conduct 5-year projects that offer culturally tailored business development assistance in the form of—

''(i) financial education, including training and counseling in—

''(I) applying for and securing business credit and investment capital;

''(II) preparing and presenting financial statements; and

''(III) managing cash flow and other financial operations of a business concern;

''(ii) management education, including training and counseling in planning, organizing, staffing, directing, and controlling each major activity and function of a small business concern; and

''(iii) marketing education, including training and counseling in—

''(I) identifying and segmenting domestic and international market opportunities;

''(II) preparing and executing marketing plans;

''(III) developing pricing strategies;

''(IV) locating contract opportunities;

''(V) negotiating contracts; and

''(VI) utilizing varying public relations and advertising techniques.

''(B) BUSINESS DEVELOPMENT ASSISTANCE RECIPIENTS.—The business development assistance under subparagraph (A) shall be offered to prospective and current owners of small business concerns that are owned by—

''(i) American Indians or tribal governments, and located on or near tribal lands;

''(ii) Alaska Natives or Alaska Native corporations; or

''(iii) Native Hawaiians or Native Hawaiian organizations.

''(3) FORM OF FEDERAL FINANCIAL ASSISTANCE.—

''(A) DOCUMENTATION.—

''(i) IN GENERAL.—The financial assistance to Native American business centers authorized under this subsection may be made by grant, contract, or cooperative agreement.

''(ii) EXCEPTION.—Financial assistance under this subsection to Alaska Native corporations or Native Hawaiian organizations may only be made by grant.

''(B) PAYMENTS.—

''(i) TIMING.—Payments made under this subsection may be disbursed in an annual lump sum or in periodic installments, at the request of the recipient.

''(ii) ADVANCE.—The Administration may disburse not more than 25 percent of the annual amount of Federal financial assistance awarded to a Native American small business center after notice of the award has been issued.

''(iii) NO MATCHING REQUIREMENT.—The Administration shall not require a grant recipient to match grant funding received under this subsection with non-Federal resources as a condition of receiving the grant.

''(4) CONTRACT AND COOPERATIVE AGREEMENT AUTHORITY.—A Native American business center may enter into a contract or cooperative agreement with a Federal department or agency to provide specific assistance to Native American and other under-served small business concerns located on or near tribal lands, to the extent that such contract or cooperative agreement is consistent with the terms of any assistance received by the Native American business center from the Administration.

''(5) APPLICATION PROCESS.—

''(A) SUBMISSION OF A 5-YEAR PLAN.—Each applicant for assistance under paragraph (1) shall submit a 5-year plan to the Administration on proposed assistance and training activities.

''(B) CRITERIA.—

''(i) IN GENERAL.—The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance.

''(ii) PUBLIC NOTICE.—The criteria required by this paragraph and their relative importance shall be made publicly available, within a reasonable time, and stated in each solicitation for applications made by the Administration.

''(iii) CONSIDERATIONS.—The criteria required by this paragraph shall include—

''(I) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of current or potential owners of Native American small business concerns;

''(II) the ability of the applicant to commence a project within a minimum amount of time;

''(III) the ability of the applicant to provide quality training and services to a significant number of Native Americans;

''(IV) previous assistance from the Small Business Administration to provide services in Native American communities; and

''(V) the proposed location for the Native American business center site, with priority given based on the proximity of the center to the population being served and to achieve a broad geographic dispersion of the centers.

''(6) PROGRAM EXAMINATION.—

''(A) IN GENERAL.—Each Native American business center established pursuant to this subsection shall annually provide the Administration with an itemized cost breakdown of actual expenditures incurred during the preceding year.

''(B) ADMINISTRATION ACTION.—Based on information received under subparagraph (A), the Administration shall—

''(i) develop and implement an annual programmatic and financial examination of each Native American business center assisted pursuant to this subsection; and

''(ii) analyze the results of each examination conducted under clause (i) to determine the programmatic and financial viability of each Native American business center.

''(C) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to renew a grant, contract, or cooperative agreement with a Native American business center, the Administration—

''(i) shall consider the results of the most recent examination of the center under subparagraph (B), and, to a lesser extent, previous examinations; and

''(ii) may withhold such renewal, if the Administration determines that—

''(I) the center has failed to provide adequate information required to be provided under subparagraph (A), or the information provided by the center is inadequate; or

''(II) the center has failed to provide adequate information required to be provided by the center for purposes of the report of the Administration under subparagraph (E).

''(D) CONTINUING CONTRACT AND COOPERATIVE AGREEMENT AUTHORITY.—

''(i) IN GENERAL.—The authority of the Administrator to enter into contracts or cooperative agreements in accordance with this subsection shall be in effect for each fiscal year only to the extent and in the amounts

as are provided in advance in appropriations Acts.

''(ii) RENEWAL.—After the Administrator has entered into a contract or cooperative agreement with any Native American business center under this subsection, it shall not suspend, terminate, or fail to renew or extend any such contract or cooperative agreement unless the Administrator provides the center with written notification setting forth the reasons therefore and affords the center an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5, United States Code.

''(E) MANAGEMENT REPORT.—

''(i) IN GENERAL.—The Administration shall prepare and submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an annual report on the effectiveness of all projects conducted by Native American business centers under this subsection and any pilot programs administered by the Office of Native American Affairs.

''(ii) CONTENTS.—Each report submitted under clause (i) shall include, with respect to each Native American business center receiving financial assistance under this subsection—

''(I) the number of individuals receiving assistance from the Native American business center;

''(II) the number of startup business concerns created;

''(III) the number of existing businesses seeking to expand employment;

''(IV) jobs created or maintained, on an annual basis, by Native American small business concerns assisted by the center since receiving funding under this Act;

''(V) to the maximum extent practicable, the capital investment and loan financing utilized by emerging and expanding businesses that were assisted by a Native American business center; and

''(VI) the most recent examination, as required under subparagraph (B), and the subsequent determination made by the Administration under that subparagraph.

''(7) ANNUAL REPORT.—Each entity receiving financial assistance under this subsection shall annually report to the Administration on the services provided with such financial assistance, including—

''(A) the number of individuals assisted, categorized by ethnicity;

''(B) the number of hours spent providing counseling and training for those individuals;

''(C) the number of startup small business concerns created or maintained;

''(D) the gross receipts of assisted small business concerns;

''(E) the number of jobs created or maintained at assisted small business concerns; and

''(F) the number of Native American jobs created or maintained at assisted small business concerns.

''(8) RECORD RETENTION.—

''(A) APPLICATIONS.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 7 years.

''(B) ANNUAL REPORTS.—The Administration shall maintain copies of the information collected under paragraph (6)(A) indefinitely.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 2004 through 2008, to carry out the Native American Small Business Development Program, authorized under subsection (c).''.

SEC. 3. PILOT PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) INCORPORATION BY REFERENCE.—The terms defined in section 36(a) of the Small Business Act (as added by this Act) have the same meanings as in that section 36(a) when used in this section.

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Small Business Administration.

(3) JOINT PROJECT.—The term 'joint project' means the combined resources and expertise of 2 or more distinct entities at a physical location dedicated to assisting the Native American community;

(b) NATIVE AMERICAN DEVELOPMENT GRANT PILOT PROGRAM.—

(1) AUTHORIZATION.—

(A) IN GENERAL.—There is established a 4-year pilot program under which the Administration is authorized to award Native American development grants to provide culturally-tailored business development training and related services to Native Americans and Native American small business concerns.

(B) ELIGIBLE ORGANIZATIONS.—The grants authorized under subparagraph (A) may be awarded to—

(i) any small business development center; or

(ii) any private, nonprofit organization that—

(I) has members of an Indian tribe comprising a majority of its board of directors;

(II) is a Native Hawaiian organization; or

(III) is an Alaska Native corporation.

(C) AMOUNTS.—The Administration shall not award a grant under this subsection in an amount which exceeds $100,000 for each year of the project.

(D) GRANT DURATION.—Each grant under this subsection shall be awarded for not less than a 2-year period and not more than a 4-year period.

(2) CONDITIONS FOR PARTICIPATION.—Each entity desiring a grant under this subsection shall submit an application to the Administration that contains—

(A) a certification that the applicant—

(i) is a small business development center or a private, nonprofit organization under paragraph (1)(B)(i);

(ii) employs an executive director or program manager to manage the facility; and

(iii) agrees—

(I) to a site visit as part of the final selection process;

(II) to an annual programmatic and financial examination; and

(III) to the maximum extent practicable, to remedy any problems identified pursuant to that site visit or examination;

(B) information demonstrating that the applicant has the ability and resources to meet the needs, including cultural needs, of the Native Americans to be served by the grant;

(C) information relating to proposed assistance that the grant will provide, including—

(i) the number of individuals to be assisted; and

(ii) the number of hours of counseling, training, and workshops to be provided;

(D) information demonstrating the effective experience of the applicant in—

(i) conducting financial, management, and marketing assistance programs designed to impart or upgrade the business skills of current or prospective Native American business owners;

(ii) providing training and services to a representative number of Native Americans;

(iii) using resource partners of the Administration and other entities, including universities, tribal governments, or tribal colleges; and

(iv) the prudent management of finances and staffing;

(E) the location where the applicant will provide training and services to Native Americans; and

(F) a multiyear plan, corresponding to the length of the grant, that describes—

(i) the number of Native Americans and Native American small business concerns to be served by the grant;

(ii) in the continental United States, the number of Native Americans to be served by the grant; and

(iii) the training and services to be provided to a representative number of Native Americans.

(3) REVIEW OF APPLICATIONS.—The Administration shall—

(A) evaluate and rank applicants under paragraph (2) in accordance with predetermined selection criteria that is stated in terms of relative importance;

(B) include such criteria in each solicitation under this subsection and make such information available to the public; and

(C) approve or disapprove each completed application submitted under this subsection not more than 60 days after submission.

(4) ANNUAL REPORT.—Each recipient of a Native American development grant under this subsection shall annually report to the Administration on the impact of the grant funding, including—

(A) the number of individuals assisted, categorized by ethnicity;

(B) the number of hours spent providing counseling and training for those individuals;

(C) the number of startup small business concerns created or maintained with assistance from a Native American business center;

(D) the gross receipts of assisted small business concerns;

(E) the number of jobs created or maintained at assisted small business concerns; and

(F) the number of Native American jobs created or maintained at assisted small business concerns.

(5) RECORD RETENTION.—

(A) APPLICATIONS.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 7 years.

(B) ANNUAL REPORTS.—The Administration shall maintain copies of the information collected under paragraph (4) indefinitely.

(c) AMERICAN INDIAN TRIBAL ASSISTANCE CENTER GRANT PILOT PROGRAM.—

(1) AUTHORIZATION.—

(A) IN GENERAL.—There is established a 4-year pilot program, under which the Administration shall award not less than 3 American Indian Tribal Assistance Center grants to establish joint projects to provide culturally tailored business development assistance to prospective and current owners of small business concerns located on or near tribal lands.

(B) ELIGIBLE ORGANIZATIONS.—

(i) CLASS 1.—Not fewer than 1 grant shall be awarded to a joint project performed by a Native American business center, a Native American business development center, and a small business development center.

(ii) CLASS 2.—Not fewer than 2 grants shall be awarded to joint projects performed by a Native American business center and a Native American business development center.

(C) AMOUNTS.—The Administration shall not award a grant under this subsection in an amount which exceeds $200,000 for each year of the project.

(D) GRANT DURATION.—Each grant under this subsection shall be awarded for a 3-year period.

(2) CONDITIONS FOR PARTICIPATION.—Each entity desiring a grant under this subsection shall submit to the Administration a joint application that contains—

(A) a certification that each participant of the joint application—

(i) is either a Native American Business Center, a Native American Business Development Center, or a Small Business Development Center;

(ii) employs an executive director or program manager to manage the center; and

(iii) as a condition of receiving the American Indian Tribal Assistance Center grant, agrees—

(I) to an annual programmatic and financial examination; and

(II) to the maximum extent practicable, to remedy any problems identified pursuant to that examination;

(B) information demonstrating an historic commitment to providing assistance to Native Americans—

(i) residing on or near tribal lands; or

(ii) operating a small business concern on or near tribal lands;

(C) information demonstrating that each participant of the joint application has the ability and resources to meet the needs, including the cultural needs of the Native Americans to be served by the grant;

(D) information relating to proposed assistance that the grant will provide, including—

(i) the number of individuals to be assisted; and

(ii) the number of hours of counseling, training, and workshops to be provided;

(E) information demonstrating the effective experience of each participant of the joint application in—

(i) conducting financial, management, and marketing assistance programs, as described above, designed to impart or upgrade the business skills of current or prospective Native American business owners; and

(ii) the prudent management of finances and staffing; and

(F) a plan for the length of the grant, that describes—

(i) the number of Native Americans and Native American small business concerns to be served by the grant; and

(ii) the training and services to be provided.

(3) REVIEW OF APPLICATIONS.—The Administration shall—

(A) evaluate and rank applicants under paragraph (2) in accordance with predetermined selection criteria that is stated in terms of relative importance;

(B) include such criteria in each solicitation under this subsection and make such information available to the public; and

(C) approve or disapprove each application submitted under this subsection not more than 60 days after submission.

(4) ANNUAL REPORT.—Each recipient of an American Indian tribal assistance center grant under this subsection shall annually report to the Administration on the impact of the grant funding received during the reporting year, and the cumulative impact of the grant funding received since the initiation of the grant, including—

(A) the number of individuals assisted, categorized by ethnicity;

(B) the number of hours of counseling and training provided and workshops conducted;

(C) the number of startup business concerns created or maintained with assistance from a Native American business center;

(D) the gross receipts of assisted small business concerns;

(E) the number of jobs created or maintained at assisted small business concerns; and

(F) the number of Native American jobs created or maintained at assisted small business concerns.

(5) RECORD RETENTION.—

(A) APPLICATIONS.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 7 years.

(B) ANNUAL REPORTS.—The Administration shall maintain copies of the information collected under paragraph (4) indefinitely.

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

(1) $1,000,000 for each of the fiscal years 2004 through 2007, to carry out the Native American Development Grant Pilot Program, authorized under subsection (b); and

(2) $1,000,000 for each of the fiscal years 2004 through 2007, to carry out the American Indian Tribal Assistance Center Grant Pilot Program, authorized under subsection (c).

Mr. KERRY. Mr. President, I am pleased today to join with my colleagues, Senators JOHNSON and SMITH, as well as the cosponsors of our legislation, Senators AKAKA, BAUCUS, BINGAMAN, CANTWELL, DASCHLE, MURRAY, and STABENOW in introducing the Native American Small Business Development Act.

As many of my colleagues are aware, last Congress the Committee on Small Business and Entrepreneurship unanimously passed nearly identical legislation, S. 2335, yet the bill was not taken up by the full Senate. Today, Senator JOHNSON, Senator SMITH and I are reintroducing this bill because we recognize that there is an even a greater need for this legislation on tribal lands across the Nation. The economy continues to slump, access to capital is even more limited, and state funding for small business initiatives is being pulled back.

According to a report released by the U.S. Census Bureau, the ''three year average poverty rate for American Indians and Alaska Natives [from 1998–2000] was 25.9 percent. Higher than for any other race groups.'' With an unemployment rate well above the national average and household income at just three-quarters of the national average, Native American communities need a commitment from the Federal government that we will help them, particularly during these difficult economic times. To reaffirm this commitment, the Johnson-Kerry-Smith bill provides Native Americans the resources they need to take advantage of the opportunities of entrepreneurship.

Mr. President, this legislation bears the same name as legislation that recently passed the House, H.R. 1166, which was reintroduced by Congressman TOM UDALL, a recognized leader in promoting the interests of American Indians. I would like to thank Congressman UDALL for his work in stewarding the Native American Small Business Development Act through the House, this Congress and last, and for his assistance in working with Senators JOHNSON and SMITH and me in drafting the Senate version of our legislation. And I would specifically like to thank Senator SMITH for his continued support on this issue.

I would again like to thank the National Indian Business Association, the National Center for American Indian Enterprise Development, the Association of Small Business Development Centers, the Oregon Native American Business Entrepreneurial Network (ONABEN), Native American Management Services, Inc., and all of the tribes that met with us or provided information to help in the drafting of this legislation.

The Senate version of the Native American Small Business Development Act, while incorporating the heart of the Udall legislation, is more comprehensive and provides greater assistance to Native American communities. Senator JOHNSON, who serves on the Indian Affairs Committee, and I, as the lead Democrat on the Senate Committee on Small Business and Entrepreneurship, were able to combine the resources and experiences of our committees in developing this legislation.

Mr. President, our need to fashion a more comprehensive business assistance package for Native American small businesses stems in part from a growing lack of commitment from the Small Business Administration (SBA) to our Native American communities under this Administration.

While I applaud the Bush Administration for responding to congressional requests by including $1 million in the Administration's FY 2003 budget request for Native American outreach, I was disappointed that it did not seek the full level of $2.5 million requested in a letter I sent with my colleagues Senators DASCHLE, Wellstone, JOHNSON, BINGAMAN and BAUCUS. Our request specifically sought funding for the SBA's Tribal Business Information Center (TBIC) program, an initiative started and successfully operated under the Clinton Administration. The TBIC program was designed to address the unique conditions faced by American Indians when they seek to start or expand small businesses.

Mr. President, I am disappointed that the Administration has eliminated all funding for Native American outreach in FY2004. With an average unemployment rate on reservations as high as 43 percent, it is inconceivable that two years of outreach is sufficient to have met our shared goal of building sustainable economic opportunities in those communities.

Mr. President, I do not believe that anyone in this Congress would dispute that economic development in Indian Country has often been difficult to achieve and that one important way to help American Indians who live on reservations is to provide them with assistance to open and run their own small businesses. Helping Native Americans open and run small businesses not only instills a sense of pride in the owner and his or her community, it also provides much-needed job opportunities, as well as other economic benefits.

Although underfunded, the TBIC program has provided assistance to a number of small businesses on Indian reservations. TBICs have the support of the American Indian communities they serve because they provide desperately

needed, culturally tailored business development assistance in those communities. The Administration should be seeking to strengthen its commitment to programs that assist Native American communities. Unfortunately, the SBA cut off TBIC funding on March 31, 2002, and now 14 months later, has not met a request by a bipartisan group of Senators to begin the reprogramming process in order to keep the TBICs open.

The Native American Small Business Development Act will ensure that the SBA's programs to assist Native American communities cannot be dissolved by making the SBA's Office of Native American Affairs (ONAA) and its Assistant Administrator permanent. Our legislation would also create a statutory grant program, known as the Native American Development grant program, to assist Native Americans. It would also establish two pilot programs to try new means of assisting Native American communities and require Native American communities to be consulted regarding the future of SBA programs designed to assist them. In short, this legislation will ensure that our Native American communities receive the adequate assistance they need to help start and grow small businesses.

The ONAA will be responsible for helping Native Americans and Native American communities start, operate, and grow small businesses; develop management and technical skills; seek out Federal procurement opportunities; increase employment opportunities through the start and expansion of small business concerns; and increase their access to capital markets.

To be selected to serve as the Assistant Administrator for ONAA, a candidate must have knowledge of Native American cultures and experience providing culturally tailored small business development assistance to Native Americans. Under our legislation, the Assistant Administrator would be statutorily required to consult with Tribal Colleges and Tribal Governments, Alaska Native Corporations (ANC) and Native Hawaiian Organizations (NHO) when carrying out responsibilities under this legislation, which would give Native American communities a true voice within the SBA. The Assistant Administrator for ONAA would be responsible for administering the Native American Development program and the pilot programs created by the Native American Small Business Development Act.

The Native American Development program is designed to be the SBA's primary program for providing business development assistance to Native American communities. To offer this support, to the SBA will provide financial assistance in establish and keep Native American Business Centers (NABC) in operation. Financial assistance under the Native American Development program would be available to Tribal Governments and Tribal Colleges. Unlike the SBA's TBIC program, however, ANCs and NHOs would also be eligible for the grants.

NABCs would address the unique conditions faced by reservation-based American Indians, as well as Native Hawaiians and Native Alaskans, in their efforts to create, develop and expand small business concerns. Grant funding would be used by the NABCs to provide culturally tailored financial education assistance, management education assistance, and marketing education assistance.

The first pilot program under the legislation establishes a Native American development grant. This grant is modeled after the Udall legislation and is designed to bring the expertise of SBA's Small Business Development Centers (SBDC) to Native American Communities. Additionally, any private nonprofit organization, which has members of an Indian tribe comprising a majority of its board of governors or is an NHO or an ANC, may also apply for the grant. Nonprofits were included in the Senate version thanks to the thoughtful input of Senator CANTWELL. Many American Indian communities in Washington state are served by an organization called ONABEN, which provides SBDC-like services to Native American communities in Washington, Oregon, Idaho, and California. Organizations like ONABEN, which also has the strong support of Senator SMITH, should be encouraged to continue their good work assisting Native American communities, and including them in the grant program available to SBDCs was an important addition to the legislation.

Finally, our legislation establishes a second pilot program to try a unique experiment in Indian Country. Grant funding would be made available to establish American Indian Tribal Assistance Centers. These centers will consist of joint entitles, such as a partnership between an NABC, a Native American development center (which receive grants from the Department of Commerce) and possibly an SBDC. The purpose of this grant is to coordinate experts from various entities to provide culturally tailored business development assistance to prospective and current owners of small business concerns on or near Tribal Lands.

Mr. President, I would again like to thank Senators JOHNSON and SMITH and all of the cosponsors of this important legislation to assist our Native American communities. I would also, again like to thank Congressman UDALL for taking the lead in the House on providing critical assistance for small businesses in Native American communities. I would urge all of my colleagues to cosponsor this legislation to help us fulfill our commitment to Native American communities.

By Ms. STABENOW (for herself, Mr. KENNEDY, Mr. LEAHY, Mr. DODD, Mr. CORZINE, Mr. LAUTENBERG, Mr. HARKIN, Mr. BINGAMAN, Mr. DURBIN, and Mr. ROCKEFELLER):

S. 1127. A bill to establish administrative law judges involved in the appeals process provided for under the medicare program under title XVIII of the Social Security Act within the Department of Health and Human Services, to ensure the independence of, and preserve the role of, such administrative law judges, and for other purposes; to the Committee on Finance.

Ms. STABENOW. Mr. President, today I rise to introduce the Fair and Impartial Rights, FAIR, for Medicare Act and bring attention to growing concerns I have heard about the possible politicization of the Medicare appeals process.

The Administrator of the Centers for Medicare and Medicaid Services, CMS, has indicated that the Administration would like to alter the current practice of requiring that Medicare beneficiaries or Medicare providers be granted a hearing before an independent Administrative Law Judge, ALJ, when their initial claim is denied.

Instead of taking the side of beneficiaries and providers, this proposed action would seek to inject political interference in the Medicare appeals process to try to deny benefits to claimants. When Medicare beneficiaries and Medicare providers are denied payment for services, the 2000 BIPA law allows them a five-step process for them to appeal this decision.

Unfortunately, the first two steps of this appeals process has been working against beneficiaries and providers. In the last five years, ALJs have reversed 53 percent of these preliminary rulings. This means that 53 percent of all cases were decided incorrectly by the preliminary steps in the Medicare appeals process. It was only when beneficiaries or providers appealed to an independent ALJ that they received the proper ruling.

ALJs serve an essential role in the claims review process because there is often conflicting and confusing information to guide beneficiaries and providers. In its 2001 report as part of its ongoing review of CMS communications, the General Accounting office described the information CMS's carriers gives to providers as ''often incomplete, confusing, out of date, or even incorrect.'' GAO found that ''the norm'' for many carriers were documents over 50 pages that ''often contained long articles, written in dense language and printed in small type.'' Documents ''were also poorly organized, making it difficult for a physician to identify relevant or new information.'' ALJs base their decisions on administrative rules, which have the benefit of being open to public comment and review, as well as case law and statutes.

Unfortunately, the Administration is seeking to undermine the independent role of ALJs who hear Medicare cases and replace ALJs with Federal employees, perhaps even political appointees,

with closer ties to the Administration's policy goals. The Administration's plan is not just an abstract proposal. It would hurt Medicare beneficiaries and Medicare providers.

The FAIR for Medicare Act would stop this political attempt to weaken the role of independent ALJs. Specifically, it would: Prohibit non-ALJs, like political appointees, from performing the duties of ALJs. Transfer Medicare ALJs from the Social Security Administration to the Department of HHS, just like a bipartisan bill introduced in the House by Congresswoman Nancy Johnson. Ensure ALJs are organizationally and functionally separated from CMS and all other political appointees other than the Secretary of HHS.

Similar legislation has been introduced in the House by Representative Nancy Johnson, and it received bipartisan support. I hope that my proposal will achieve the same result.

I ask unanimous consent that the text of the bill and several articles be printed in the RECORD.

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

S. 1127

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 ''Fair And Impartial Rights (FAIR) for Medicare Act of 2003''.

SEC. 2. ADMINISTRATIVE LAW JUDGES WITHIN HHS; ENSURING INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES; PRESERVATION OF THE ROLE OF ADMINISTRATIVE LAW JUDGES.

(a) ALJS WITHIN HHS.—Any administrative law judge performing the administrative law judge functions described in section 1869 of the Social Security Act (42 U.S.C. 1395ff) shall be within the Department of Health and Human Services.

(b) ENSURING INDEPENDENCE OF ALJS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall ensure the independence of administrative law judges described in subsection (a).

(2) INDEPENDENCE DESCRIBED.—In order to ensure the independence described in paragraph (1), each administrative law judge described in subsection (a) shall—

(A) be an impartial decisionmaker;

(B) be bound only by applicable statutes, regulations, and rulings issued in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedures Act'');

(C) be placed by the Secretary in an administrative office that is organizationally and functionally separate from the Centers for Medicare & Medicaid Services; and

(D) report to, and be under the general supervision of, the Secretary, but shall not report to, or be subject to supervision by, another officer of the Department of Health and Human Services.

(c) PRESERVATION OF THE ROLE OF ALJS.—An individual who is not an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, may not perform the functions of an administrative law judge specified in section 1869 of the Social Security Act (42 U.S.C. 1395ff).

(d) CONFORMING AMENDMENT.—Section 1869(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395ff(f)(2)(A)(i)) is amended by striking ''of the Social Security Administration''.

[From The New York Times, March 16, 2003]

BUSH PUSHES PLAN TO CURB APPEALS IN MEDICARE CASES

(By Robert Pear)

Washington, March 15—The Bush administration says it is planning major changes in the Medicare program that would make it more difficult for beneficiaries to appeal the denial of benefits like home health care and skilled nursing home care.

In thousands of recent cases, federal judges have ruled that frail elderly people with severe illnesses were improperly denied coverage for such services.

In the last year, Medicare beneficiaries and the providers who treated them won more than half the cases—39,796 of the 77,388 Medicare cases decided by administrative law judges. In the last five years, claimants prevailed in 186,300 cases, for a success rate of 53 percent.

Under federal law, the judges are independent, impartial adjudicators who hold hearings and make decisions based on the facts. They must follow the Medicare law and rules, but are insulated from political pressures and sudden shifts in policy made by presidential appointees.

President Bush is proposing both legislation and rules that would limit the judges' independence and could replace them in many cases.

The administration's draft legislation says, ''The secretary of health and human services may use alternate mechanisms in lieu of administrative law judge review'' to resolve disputes over Medicare coverage.

Under the legislative proposal, cases could be decided by arbitration or mediation or by lawyers or hearing officers at the Department of Health and Human Services. The department recently began testing the use of arbitration in Connecticut under a law that permits demonstration projects.

Tommy G. Thompson, the secretary of health and human services, said the proposed legislative changes would give his agency ''flexibility to reform the appeals system'' so the government could decide cases in a more ''efficient and effective manner.''

The department said there was an ''urgent need for improvements to the Medicare claim appeal system,'' in part because the number of appeals was rising rapidly.

Consumer groups, administrative law judges and lawyers denounced the proposals. Judith A. Stein, Director of the Center for Medicare Advocacy in Willimantic, Conn., said, ''The president's proposals would compromise the independence of administrative law judges, who have protected beneficiaries in case after case, year after year.''

Beneficiaries have a personal stake in the issue. When claims are denied, a beneficiary is often required to pay tens of thousands of dollars for services already received. In a typical case, an administrative law judge ordered Medicare to pay for 230 home care visits to a 67-year-old woman with breast cancer, heart disease and arthritis. Medicare officials had said the woman should pay the cost. But the judge ordered Medicare to pay because the woman was homebound and the services were ''reasonable and necessary.''

When federal agencies issue rules or decide cases; they generally must follow the Administrative Procedure Act, a 1946 law intended to guarantee the fairness of government proceedings.

Ronald G. Bernoski, president of the Association of Administrative Law Judges, said: ''We see President Bush's proposals as a serious assault on the Administrative Procedure Act, a stealth attack on the rights of citizens to fair, impartial hearings. These hearings guarantee due process of law, as required by the Constitution.''

The American Bar Association and the Federal Bar Association, which represents lawyers who practice in federal courts and before federal agencies, have expressed similar concerns.

Health care providers, which are involved in many of the appeals, share those concerns.

Robert L. Roth, a Washington lawyer who has represented hospitals and suppliers of medical equipment, said: ''The interests of providers and beneficiaries are aligned. Access to an independent decision maker, an administrative law judge, is quite valuable because it's often your first opportunity to get a fair review of government action.''

Medicare officials could adopt the proposed rules, regardless of whether Congress accepts Mr. Bush's recommendation for changes in the law.

The proposed rules would require administrative law judges to ''give deference'' to policies adopted by Medicare and its contractors, which review and pay claims for the government. Beneficiaries would have to show why such policies should be disregarded,

That would be a significant change. Administrative law judges are now required to follow Medicare statutes and regulations, but not the agency's policies. As a result, the judges often grant benefits previously denied by the Medicare agency or its contractors.

In the Connecticut experiment, arbitration will be used to resolve some claims disputes, and beneficiaries may opt out. If this approach produces prompt, fair decisions with less paperwork, it could be a model for Congress in changing the appeals process.

But Matthew L. Spitzer, dean of the University of Southern California Law School, said that consumers ''should think long and hard before they agree to binding arbitration.'' It is, he said, extremely difficult for an individual to overturn an arbitrator's decision.

Ms. Stein, who has represented Medicare patients in hundreds of cases, agreed. ''The president proposes replacing administrative law judges with some form of dispute resolution,'' Ms. Stein said. ''This puts beneficiaries at a disadvantage, with unequal bargaining power and inadequate expertise to do battle with the Medicare agency.''

The judges are full-time government employees who typically receive salaries of $95,000 to $140,000 a year.

To ensure that federal agency hearings would be fair, Congress in 1946 protected the decision makers, providing that they could be dismissed or demoted ''only for good cause.'' The judges who hear Medicare cases have extra protection because they are employed by the Social Security Administration, an independent agency.

Congress revamped the appeals process in 2000, to enhance the rights of beneficiaries and to expedite decisions. The changes were supposed to take effect in October 2002. But Medicare officials said that without more money, they could not meet the new deadlines, so they have postponed many of the changes.

Medicare officials said they wanted to end the arrangement under which Social Security judges decide Medicare cases. They have announced plans to transfer responsibility for hearing appeals to the Medicare agency from Social Security, and they hope to do so by Oct. 1.

A bipartisan bill introduced by Representative Nancy L. Johnson, Republican of Connecticut, would make the transfer in 2005. The bill requires the secretary of health and human services to preserve the judge's role as independent decision makers.

The potential for conflict seems to be inherent in the relationship between agency

officials and administrative law judges, with tensions flaring periodically. In 1983, the Association of Administrative Law Judges filed a lawsuit, saying that Social Security officials appointed by President Ronald Reagan had put improper pressure on them to deny benefits to people with disabilities.

A Federal District Court found that Social Security had engaged in practices ''of dubious legality,'' which tended to encroach on the judges' independence. The agency halted the practices after the lawsuit was filed.

[From the Philadelphia Inquirer, March 20, 2003]

TILT!

MEDICARE LOOKS TO RIG APPEALS SYSTEM IN ITS FAVOR

If the score's going against you, just change the rules of the game.

That is, if you're president.

The Bush administration's plan to rework the appeals process for Medicare recipients denied treatment appear to be just that: a rules change that tilts the playing field.

In losing thousands of these appeal annually, the federal government is being ordered to pay millions of dollars for health-care services.

So administration officials start calling for ''flexibility to reform the appeals system.'' Translation: We want to win more cases and pay out less.

It's not as though the appeals process is a runaway train; in the last year, only a little more than half the cases were won by Medicare recipients. But nearly 40,000 appeals were upheld; put another way, that means 40,000 elderly citizens had been improperly denied care.

It wasn't for face lifts or tummy tucks, either. Rather, it was for things that make all the difference to frail seniors, things like home health assistance and skilled nursing care.

Independent administrative judges handle these appeals now. Under proposed new rules, the Department of Health and Human Services could steer the cases into arbitration or mediation—both of which experts view as less likely to favor the citizens.

The administration also wants to turn the independent judges into Medicare employees—and to require them to ''give deference'' to policies adopted under Medicare.

At this rate, why not drop all pretense and just ban appeals? That way every Medicare recipient—including those much-coveted Florida voters—would know exactly where they stand with this White House.

Medicare's money troubles are real enough. But trimming expenses by undercutting a fair appeals process is wrong. And to pursue this policy while seeking huge tax cuts and claiming to attend to seniors' health care needs is cynical.

[From The Seattle Times, May 7, 2003]

MEDICARE APPEAL PROCESS SHOULD NOT BE WEAKENED

(By Kathleen O'Connor)

With our focus riveted on Iraq and the state's dramatic budget shortfalls, virtually no attention is being paid to the proposed, ominous changes in Medicare. No, not the Medicare prescription-drug benefit that hogs headlines. It's something more dramatic, more important. The proposed changes could essentially eliminate Medicare due process.

How? By removing the independence of the administrative law judges who now hear Medicare appeals and by axing most of the current terms and conditions under which those appeals can be made. The Bush administration wants to let the secretary of the Department of Health and Human Services (HHS) use arbitration or mediation and—get this—lawyers or hearing officers inside the HHS to make decisions on Medicare appeals. This means appeals would no longer be heard by independent judges in a separate agency. Instead, appeals would be heard in-house by Medicare employees.

Nothing like letting the fox guard the hen house. Where is due process or equal protection in this? How can inside gatekeepers be fair? How do you hear an appeal when your job is to guard the treasury? How long would these Medicare employee-judges keep their jobs if they keep agreeing that the beneficiaries are right, as they have been in over 50 percent of the appeals?

Even as far back as 1996, the Office of the Inspector General—the internal audit arm of HHS that manages Medicare—found that Medicare was dead wrong in 55 percent of the claims it processed. Recent data cited in The New York Times revealed that over half the appeals in the past five years eventually were found to be in the beneficiaries' favor. In 2002 alone, Medicare beneficiaries and their providers prevailed in almost 40,000 of the 77,000 appeals that were filed, or 52 percent of the time.

What's remarkable about this is that Medicare appeals had to have been lost at two lower levels before the beneficiaries even got to these judges. The 1946 Administrative Procedure Act was designed to assure we have fair and just recourse when we have complaints against the government.

Since the creation of Medicare, appeals have been heard before these administrative law judges and have been based on Medicare laws and regulations rather than internal Medicare policies that frequently change with each administration. If the appeals function is brought in-house, independent appeals would vanish and coverage decisions could be made by the whim of an internal policy, whether written or not. Worse yet, the administration says these changes don't really need congressional approval and can simply be made by procedural rules that would have the administrative law judges ''give deference'' to Medicare's policies and those of Medicare contractors.

What this really means is the burden of proof would be placed on the harmed beneficiaries and their providers, who would have to show why these policies should be ignored. Why does this matter? Follow the money. Let's take a look at what Medicare covers. Part A pays for inpatient hospital care, skilled nursing home care, home health care and hospice stays. Part B basically covers all outpatient care (doctors) and outpatient hospital services, cancer screening, lab tests and medical equipment, such as wheel chairs.

Take the case of Mrs. H in Brooklyn, N.Y. She sought coverage for a prescribed transcutaneous electronic nerve stimulator (TENS) to treat her fibromyalgia, a chronic disorder characterized by widespread musculoskeletal pain and fatigue. Medicare initially denied coverage for this device, noting that the information provided did not support the need for the item. Mrs. H appealed and was denied at what's called the fair hearing level, based on internal coverage guidelines. After that denial, the appeal went to an administrative law judge for an independent ruling. The judge found in Mrs. H's favor, deeming the device to be ''medically necessary.''

The finding provided on $646, but when you're poor and living on Social Security, $600 is a lot of money. Other findings are in the tens of thousands of dollars. How many internal Medicare judge employees would be that independent? Administrative law judges can be dismissed ''only for good cause.'' If the appeals function is an in-house post, the employee decision-maker can be transferred or reassigned. The administration law judges can be dismissed ''only for good cause.'' If the appeals function is an in-house post, the employee decision-maker can be transferred or reassigned. The administration will say it is only making ''procedural changes''; that an appeals process still ''exists.'' Sure, but it is one that harms rather than helps the beneficiary. They may say there is still due process. But it will no longer be an independent review. Not any real due process. Which is the issue after all. As a friend is fond of saying: ''Token due process is not due process at all.''

By Mr. FEINGOLD (for himself, Mr. LEAHY, and Mr. KOHL:

S. 1128. A bill to amend title 11 of the United States Code with respect to the dismissal of certain involuntary cases; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I introduce the ''Involuntary Bankruptcy Improvement Act,'' along with Senator LEAHY, the ranking member of the Judiciary Committee, and my colleague Senator KOHL, the senior Senator from Wisconsin. This bill addresses the growing problem of the use of involuntary bankruptcy petitions as a means to harass public officials. A similar bill has been introduced in the other body by the Chairman of the House Judiciary Committee. I believe this bill should be enacted on its own as soon as possible or, if necessary, be a part of any bankruptcy-related legislation that goes through the Congress this year.

Involuntary bankruptcy petitions are a rarely used, but legitimate, creditor tool to prevent the wasting of an asset that would otherwise be available to satisfy creditor claims. Unfortunately, tax protestors and others with real or imagined grievances against the government have filed fraudulent involuntary bankruptcy petitions against government officials as a way to harass and harm them. This problem came to my attention recently because of a case in my home State of Wisconsin.

In that case, a man named Steven Magritz undertook a vendetta against thirty-six Ozaukee County officials after the County pursued a foreclosure action against him for failing to pay taxes by filing involuntary bankruptcy petitions against those officials. Although the petitions were ultimately dismissed and Magritz was convicted of criminal slander and sentenced to five years in prison, the petitions had, and are still having, an impact on the credit ratings of the officials.

Current law provides for punitive damages to be assessed against someone who files an erroneous petition of this kind. But because bankruptcy filings are public records and credit reporting agencies include information in their reports for ten years, erroneous or fraudulent filings can have a devastating impact on the credit ratings of the individuals involved even if the perpetrator is punished. The local government officials that were the subject of this vendetta have had great difficulty in obtaining loans or refinancing their homes.

Although a comprehensive study of this problem has not been done, I understand that fraudulent involuntary bankruptcy petitions have been filed against federal district court judges in Ohio and Maine, a U.S. Attorney in Maine, and IRS agents in Ohio. A district in California reported that over 10 percent of the involuntary bankruptcy petitions filed in recent years were likely filed in bad faith.

The bill I am introducing today will address this problem in two ways. First, it requires the bankruptcy court on motion of the debtor to expunge from the court's file all records relating to the filing of an involuntary petition and any references to such petition, if 1. the debtor is an individual; 2. the petition is dismissed; and 3. the petition is false or contains a materially false, fictitious, or fraudulent statement.

Second, the bill authorizes a bankruptcy court to prohibit credit reporting agencies from issuing a consumer report that contains any information relating to an involuntary bankruptcy petition or to the case commenced by such petition where the debtor is an individual and the court has dismissed the petition.

These steps will retain involuntary bankruptcy as a legitimate tool to preserve debtor assets, but will allow the courts to address the real harm that can befall an innocent victim of harassment. I urge my colleagues to support this reasonable and necessary reform of the bankruptcy laws. 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. 1128

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 ''Involuntary Bankruptcy Improvement Act of 2003''.

SEC. 2. INVOLUNTARY CASES.

Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(*l*)(1) If—

''(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

''(B) the debtor is an individual; and

''(C) the court dismisses such petition;

the court, upon motion of the debtor, shall expunge from the records of the court such petition, all the records relating to such petition in particular, and all references to such petition.

''(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.''.

Mr. KOHL. Mr. President, I rise today to join my colleagues, Senators LEAHY and FEINGOLD in introducing the Involuntary Bankruptcy Improvement Act of 2003.

This bill responds to an unfortunate abuse of the involuntary bankruptcy laws which occurred in my home state of Wisconsin last year. There, a tax protestor filed involuntary bankruptcy petitions against 36 public officials. Even though none of the filings had any merit, the protestor succeeded in ruining the credit ratings of many of the public officials by filing what the Milwaukee Journal-Sentinel described as ''an avalanche of legal documents against them.'' Some of the victims did not even know they were the subject of an involuntary bankruptcy case until they tried to use their lines of credit or obtain credit.

Involuntary bankruptcy plays an important role in our system, but when it is abused by frivolous and fraudulent filings the victims deserve the right to clear their good names.

Some background on involuntary bankruptcy is in order. Under current law, one or more creditors can file an involuntary bankruptcy petition against an individual or corporation. The credit problems were created because the filing of an involuntary bankruptcy case is a matter of public record pursuant to bankruptcy code section 107. In addition, credit reporting agencies include the filing on a person's credit report for up to ten years.

The abuse of the involuntary bankruptcy laws is not common, but the Wisconsin case is not unique either. The National Conference of Bankruptcy Clerks advises that after an initial review, they found that federal district judges in Ohio and Maine have been the subject of involuntary petitions, as well as a United States Attorney in Maine, and two IRS agents in Ohio. Finally, the bankruptcy clerk in the Central District of California reported that approximately 11 percent of involuntary petitions were bad faith filings over a 27 month period ending in March 2003.

This bill addresses the problem in two primary ways. First, it amends the bankruptcy code to require that on the motion of the debtor that the bankruptcy courts expunge from the courts file all records relating to the filing of an involuntary petition under certain conditions. Those conditions are: (1) the petition is false or contains a materially false, fictitious, or fraudulent statement, (2) the debtor is an individual; and (3) the petition is dismissed.

Second, the bill amends the bankruptcy code to authorize a bankruptcy court to prohibit all credit reporting agencies from issuing a consumer report that contains any information relating to the involuntary bankruptcy petition or to the case commenced by such petition where the debtor is an individual and the court has dismissed the petition.

So while this bill cannot prohibit someone from filing involuntary bankruptcy petitions like the man in Wisconsin, it can make it significantly easier for the victim to contain the impact on his or her credit rating and to remove the unfortunate incident from the record.

Mr. President, I understand that Chairman SENSENBRENNER is moving the same bill on the House side. I look forward to working with him and my Senate cosponsors to get this important change to the bankruptcy code into law.

By Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. VOINOVICH, Ms. CANTWELL, Mr. DEWINE, Mr. LAUTENBERG, Mr. FEINGOLD, and Mr. KENNEDY):

S. 1129. A bill to provide for the protection of unaccompanied alien children, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the ''Unaccompanied Alien Child Protection Act of 2003,'' bipartisan legislation to reform the way the Federal Government treats unaccompanied alien children who are in Federal immigration custody. I am pleased to be joined by my colleagues, Senators BROWNBACK, VOINOVICH, KENNEDY, CANTWELL, DEWINE, FEINGOLD, and LAUTENBERG in introducing this important measure.

Approximately 5,000 foreign-born children under the age of 18 enter the United States each year unaccompanied by parents or other legal guardians. These children are among the most vulnerable of the immigrant population.

Many have often entered the country under traumatic circumstances. They are young and alone, subject to abuse and exploitation. They are often unable to articulate their fears, their views, or testify to their needs as accurately as adults can.

Despite these facts, U.S. Immigration laws and policies have been developed and implemented without regard for their effect on children, particularly on unaccompanied alien children.

Under current immigration law, these children are forced to struggle through a system designed primarily for adults, even though they lack the capacity to understand nuances legal principles and procedures. Children who may very well be eligible for relief are often vulnerable to being deported back to the very life-threatening situations from which they fled—before they are even able to make their cases before the Department of Homeland Security or an immigration judge.

Prior to March 1, 2003, the Immigration Naturalization Service, INS, had responsibility for the care, custody, and treatment of unaccompanied alien children. Too often, the INS, fell short in fulfilling the protection side of these responsibilities.

The legislation that I am introducing today builds on Section 462 of Public Law 107–296, the ''Homeland Security Act of 2002'', which provided for the transfer of responsibility for the care

and placement of unaccompanied alien children from the now-abolished INS to the Office of Refugee Resettlement, ORR, within the Department of Health and Human Services. This provision was based on S. 121, comprehensive legislation relating to unaccompanied alien children that I introduced at the beginning of the 107th Congress.

With the enactment of the Homeland Security Act, we set into motion the centralization of responsibility for the care and custody of unaccompanied alien children in the Office of Refugee Resettlement. The first phase of this transfer of responsibility occurred on March 1, 2003. Once the transition is completed, we have finally resolved the conflict of interest inherent in the former system.

I am pleased that the provision transferring responsibility for the care and custody of unaccompanied alien children was contained in the Homeland Security Act. Its inclusion in the new law was an important first step in reforming the way unaccompanied alien children are treated. It was a key provision for two reasons: First, it will help ensure that the Secretary of Homeland Security is not burdened with policy issues unrelated to the threat of terrorism. The new Department has a huge and important mission and its attention should be focused on that mission. Second, it recognizes that the Federal Government has a special responsibility to protect these children who are in federal custody. The INS did not always live up that responsibility.

But, the transfer of authority to the ORR—by itself—is not enough to ensure that these children are properly treated. Congress now has a responsibilty to go beyond the simple transfer and set the priorities for ORR and its new jurisdiction over unaccompanied foreign-born minors.

A number of other important reforms that were contained in last year's S. 121 were left out of the Homeland Security Act. Enactment of these reforms will be crucial if we truly are to reform the manner in which these children are treated. As I mentioned, the Unaccompanied Alien Child Protection Act of 2003 builds on the Homeland Security Act in two ways: First, it would make a number of technical and conforming changes in law to bring about the smooth transfer of the INS's unaccompanied alien child-related functions to ORR. Second, it would make a number of more substantive reforms in law with respect the respect to the treatment of these children—reforms that are designed to ensure that such children are treated with fairness and compassion.

Other provisions include those that would keep children who are criminals or who pose a threat to national security under the custody of the Department of Homeland Security rather than transfer responsibility of them to the ORR.

I first became involved in this issue when I heard about a young 15-year old Chinese girl who stood before a U.S. immigration court facing deportation proceedings. She had found her way to the United States as a stowaway in a container ship captured off of Guam, hoping to escape the repression she had experienced in her home country.

She had been placed on a boat bound for the United States by her very own parents, fleeing China's rigid family planning laws, Under these laws, she was denied citizenship, education, and medical care. She came to this country alone and desperate.

And what did our immigration authorities do when they found her? The INS detained her in a juvenile jail in Portland, OR, for 8 months before her asylum hearing, and 4 months after she was granted asylum.

At her asylum hearing, the young girl stood before a judge, unrepresented by counsel, confused, and unable to understand the proceedings against her. She could not wipe away the tears from her face because her hands were chained to her waist. According to a lawyer who later came to represent her, ''her only crime was that her parents had put her on a boat so she could get a better life over here.''

While the young girl eventually received asylum in our country, she unnecessarily faced an ordeal no child should bear under our immigration system. This young Chinese girl represents only one of 5,000 foreign-born children who, without parents or legal guardians to protect them, are discovered in the United States each year in need of protection. This, is unacceptable treatment. We have a responsibility to do better than this.

Central throughout the Unaccompanied Alien Child Protection Act of 2003 are two concepts: 1. The United States Government has a fundamental responsibility to protect unaccompanied children in its custody; and 2. in all proceedings and actions, the government should have as a high priority protecting the interests of these children, most of whom are unable to understand the nature of the proceedings in which they are involved.

This bill would ensure that children who are apprehended by immigration authorities are treated humanely and appropriately by: ensuring that eligible unaccompanied alien children are promptly placed in the custody of Office of Refugee Resettlement after they are encountered by immigration officials; ensuring that the children have counsel to represent them in immigration proceedings and matters; authorizing the Director of ORR to provide guardians ad litem for the children to look after their interests; establishing clear guidelines and uniformity for detention alternatives such as shelter care, foster care, and other child custody arrangements; establishing minimum standards for detention and alternative settings that take into account the special needs of children; improving such children's access to existing options for permanent protection when U.S. immigration and child welfare authorities believe such protection is warranted; setting forth procedures that immigration officers should follow when apprehending unaccompanied alien children at the United states border or at United States ports of entry; establishing procedures to ensure that the true age of an alien who claims to be under the age of 18 is determined; ensuring that the Department of Homeland Security, rather than the Office of Refugee Resettlement, maintain custody over children who are either criminals or threats to national security; and establishing procedures to ensure that certain unaccompanied alien children from Mexico or Canada, encountered along the United States border, are returned to their homes, subject to formal agreements between the United States and those countries providing for their safe return without undue delay.

Without enactment of my legislation, none of these important parameters would be placed on the Office of Refugee Resettlement or the Department of Homeland Security.

This bill also includes provisions that provide for the safety of the significant number of unaccompanied alien children who are victims of smuggling or trafficking rings. For example, 2 years ago, Phanupong Khaisri, a 2-year old Thai child, was brought to the United States by two individuals falsely claiming to be his parents, but who were actually part of a major alien trafficking ring.

The INS was prepared to deport the child back to Thailand. It was not until Members of Congress and the local Thai community had intervened, however, that the INS decided to allow the child to remain in the United States until the agency could provide proper medical attention and determine what course of action would be in his best interest.

The Unaccompanied Alien Child Protection Act aims to prevent situations like this from recurring. Moreover, the legislation would ensure that children are released into safe and humane environments while awaiting a determination of their status when that is appropriate, and it would ensure that the children are protected from smugglers, traffickers, or others who might exploit them.

Further, it would require the ORR to take steps to ensure that unaccompanied alien children are protected from smugglers or others who may wish to do them harm, and authorizes reimbursement for State and local expenses associated with caring for unaccompanied alien children.

Children, even more than adults, have incredible difficulty understanding the complexities of the immigration system without the assistance of counsel. Despite this reality, most children in immigration custody are overlooked and unrepresented. Without legal representation, children are at risk of being returned to their home

countries where they may face further human rights abuses.

The Unaccompanied Alien Child Protection Act of 20032 would require that all unaccompanied alien children in Federal custody by reason of their immigration status have counsel to represent them in any immigration proceedings involving them. It would vest in the Director of ORR responsibility for ensuring that the children have counsel, and it would provide the Director power to establish an infrastructure for developing a system to recruit and support pro bono counsel who can represent these children without cost to them or to the government.

It provides, as a last resort, that counsel could be provided for the children at government expense, capping the fees that such counsel could charge in the event that the government pays for such counsel.

This bill would authorize, but not mandate, the Director of ORR to put into place a system of guardians ad litem who would help the court in determining the best interests of children in U.S. custody.

The vast majority of unaccompanied alien children have been forced to maneuver the immigration system without any representation or without any assistance. This is unacceptable. It results in many children participating in a system without any understanding of the process they are undergoing or the ramifications of their situation.

Under this section, the guardian ad litem would not be working ''for the child.'' Nor would he or she be working for the Department of Homeland Security. Instead, he or she would be an impartial observer reporting to the court and to the Office of Refugee Resettlement on what he or she thinks is in the best interest of the child.

The guardians ad litem system could be modeled after any of a number of systems already existing in juvenile courts throughout the American juvenile justice system. This system is not a novel legal concept, but one that is trusted and already in place in every state in proceedings involving juveniles.

Imagine the fear of a foreign-born child, in the United States alone without a parent or guardian. Imagine that child being thrust into a system she did not understand, given no legal aid, placed in jail that housed juveniles with serious criminal convictions. Mr. President, I find it hard to believe that our country would have allowed innocent children to be treated in such a manner.

That is why my colleagues and I are introducing this legislation today. The Unaccompanied Alien Child Protection Act of 2003 will help our country fulfill the special obligation to these children.

I am proud to have the support of the United States Conference of Catholic Bishops, the Women's Commission on Refugee Women and Children, the Lutheran Immigration and Refugee Service, the American Bar Association, the United National High Commissioner for Refugees, and many other organizations with whom I have worked closely to develop this legislation.

I urge my colleagues to join me by cosponsoring this important measure and ensuring that these reforms are finally enacted.

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. 1129

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2003''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

Sec. 201. Guardians ad litem.
Sec. 202. Counsel.
Sec. 203. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.
Sec. 304. Effective date.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children's asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 602. Technical corrections.
Sec. 603. Effective date.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; and

(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office.

(3) DIRECTORATE.—The term ''Directorate'' means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

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

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that

is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in subparagraph (A);

(ii) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iv) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child's native language.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall promptly make arrangements to transfer the care and custody of such child to the Directorate.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets the age requirements for treatment under this Act shall be made by the Director in accordance with section 105.

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4) and section 103(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—The programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated in accordance with subparagraph (A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Office shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include, at a minimum, the following information:

(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(B) A description of the type of immigration relief sought and denied to such children.

(C) A statement of the nationalities, ages, and gender of such children.

(D) A description of the procedures used to effect the removal of such children from the United States.

(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) IN GENERAL.—The Director shall develop procedures to determine the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect 90 days after the date of enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

SEC. 201. GUARDIANS AD LITEM.

(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

(1) APPOINTMENT.—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

(G) report factual findings relating to—

(i) information gathered pursuant to subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information gathered pursuant to subparagraph (D).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian;

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

(1) circumstances and conditions that unaccompanied alien children face; and

(2) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry

out a pilot program to test the implementation of subsection (a).

(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge.

(3) GOVERNMENT-FUNDED LEGAL REPRESENTATION AS A LAST RESORT.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, if no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) shall not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) AVAILABILITY OF FUNDING.—In carrying out this paragraph, the Director may make use of funds derived from any source designated by the Secretary of Health and Human Services from discretionary funds available to the Department of Health and Human Services.

(D) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection. National nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall ensure that no such agency receiving funds under this subsection is a grantee or contractee for more than 1 of the following services:

(i) Services provided under section 102.

(ii) Services provided under section 201.

(iii) Services provided under paragraph (2).

(iv) Services provided under paragraph (3).

(6) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) TERMINATION OF APPOINTMENT.—Counsel appointed under subsection (a)(3) shall carry out the duties described in subsection (b) until—

(1) those duties are completed;

(2) the child departs the United States;

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3));

(4) the child is granted protection under the Convention Against Torture;

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158);

(6) the child is granted permanent resident status in the United States; or

(7) the child attains 18 years of age;

whichever occurs first.

(e) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(f) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 21 on the date of application who is present in the United States—

''(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply;'';

(2) in subparagraph (B), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) the Secretary of Homeland Security may waive subparagraphs (A) and (B) of paragraph (2) of section 212(a) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

SEC. 303. REPORT.

Not later than January 31, 2004, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

SEC. 304. EFFECTIVE DATE.

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied child as defined in section 101(a)(51).''.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out—

(1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2003; and

''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2003, including the power to—

''(i) declare providers to be in breach and seek damages for noncompliance;

''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

(c) CLARIFICATION OF DIRECTOR'S AUTHORITY TO HIRE PERSONNEL.—Section 462(f)(3) of the Homeland Security Act of 2002 (6 U.S.C. 279(f)(3)) is amended—

(1) by striking ''(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel'' and inserting the following:

''(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the personnel''; and

(2) by inserting at the end the following:

''(B) EXCEPTION.—The Director may hire and fix the level of compensation of an adequate number of personnel to carry out the duties of the Office. Notwithstanding the provisions of subparagraph (A), the Director may elect not to receive the transfer of any personnel of the Department of Justice employed in connection with the functions transferred by this section or, at the Director's discretion, to assign different duties to such personnel.''.

SEC. 602. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied

alien children who are released to a qualified sponsor.''.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

Mr. BROWNBACK. Mr. President, I am honored to join my distinguished colleagues, Senators FEINSTEIN and VOINOVICH, to introduce this important piece of legislation that will address an area of our immigration law that is sorely neglected—unaccompanied alien children. Currently, these children face a legal loophole that can leave them in a confusing maze of technicalities, none of which actually help the child or the nation. This bill will fix that problem through several very straightforward remedies.

Last year, through the Homeland Security Act, the responsibility for the care and custody of unaccompanied alien children was transferred from the now-defunct Immigration and Naturalization Service to the Department of Health and Human Services's Office of Refugee Resettlement. This was an important step in the right direction, but it did not accomplish everything we had hoped to do last year. That is why I am pleased to join my colleagues in taking one more crack at providing safeguards for these vulnerable children.

These safeguards are simple, but to the point. This legislation will ensure that the transfer of responsibilities mandated last year actually occurs in an orderly manner. It will remind Federal authorities to keep in mind the special needs and circumstances of unaccompanied children. It will ensure that these children have access to competent counsel and guardians ad litem when appropriate. Minimum standards for the care and custody of these unaccompanied alien children will be established, and the procedures for access to permanent protection for abused, abandoned or neglected children will be reformed. Finally, the legislation will require an annual report to Congress to ensure these provisions are being carried out faithfully.

But that is all simply the legalese surrounding this issue. What's truly important are the children. That's the whole point of this legislation, and why I—and all of my colleagues who are cosponsors—got involved and are committed to seeing this legislation pass. It is the children who suffer, through no fault of their own, if they're run through the legal system in the United States without any accounting for their unique situation as children.

Last year, the Senate Judiciary Committee held a hearing on this topic, inviting Senator FEINSTEIN to speak—her testimony and the testimony of the children who came, moved me to cosponsor the bill that very day. I still remember the story the Senator told of a young girl from China, standing before a judge, unable to speak the language, her arms shackled to her sides, crying. That sort of situation is shameful.

Or how about the case of Edwin Munoz, a Honduran youth who testified last year during this hearing? His story was simple but appalling: abandoned by his parents at age 7, he was left in the care of a cousin, who beat him mercilessly. At 13, he finally escaped, and hitchhiked alone to the United States. I can only imagine how frightening that experience was—but unfortunately it was only the start: once he arrived in the U.S., he was thrown into a San Diego juvenile facility filled with violent offenders. Without a lawyer or court-appointed guardian for weeks, this became a nightmare of taunts from the other inmates and being shackled each time he had to appear in court.

These are children—not common criminals—and they should not be treated as such. They should be treated as children.

The main purpose of our legislation is to ensure just that—that children who come to the United States are still treated as children. That does not mean that they will escape a proper and appropriate accounting and ruling on whether they may stay or not—it simply means that their age and circumstances will be considered at all times.

I therefore urge my colleagues to support this critically important legislation. We are still the Nation described upon the Statue of Liberty—let's ensure our legal system remembers this point as well.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator FEINSTEIN in the introduction of the Unaccompanied Alien Child Protection Act, and I commend her long-standing commitment to this issue.

In recent years, increasing numbers of foreign-born children have come to the United States, unaccompanied by their parents or their guardians. Last year, more than 5,000 arrived, and the numbers have continued to rise this year. Some are fleeing from armed conflict or other dangerous conditions in their home countries. Others are fleeing from human rights abuses, including forced recruitment as soldiers, slavery, child labor, prostitution, or forced marriage. Still others escape to the United States because they have been abused or abandoned by their parents or care givers. Additional numbers are brought to the United States by a family friend or relative, by paid smugglers, or by traffickers involved in organized crime.

Regardless of how they arrive, these children often enter our country after traumatic experiences, speaking little to no English, and unaware of their rights under U.S. law. They may well be good candidates for asylum, but they have no way to apply for it, and they are left to represent themselves in an immigration court against experienced trial lawyers for INS.

Their plight is exacerbated by the fact that when they arrive, they are frequently detained. Many of them languish for long periods in shelters designed for short-term use, without access to translators, telephones, or medical care and other vital services. But these are the ''fortunate'' ones, compared to many others detained, with dangerous criminals, put in handcuffs, shackles, strip-searched, and required to wear prison uniforms.

Shamefully, this is happening every day in the United States of America. It's no wonder other countries criticize us for hypocrisy on human rights.

Last year, in the Homeland Security Act, we took the important first step of transferring responsibility for the care and custody of these children to the Office of Refugee Resettlement in the Department of Health and Human Services. This office has decades of experience working with foreign-born children and can easily include the care of these unaccompanied children in its existing functions.

That Act, however, left out critical safeguards for these children. The legislation we are introducing corrects these omissions. It addresses many of the problems facing unaccompanied children and will help bring our treatment of them in line with international standards.

Essential to these efforts is providing an appointed counsel and a special guardian to assist them. Statistics demonstrate that applications for asylum are four times more likely to be granted when represented by counsel. Yet, less than half of the children in INS custody are represented by an attorney.

Children are given appointed counsel in important non-immigration cases, and they should be afforded the same right in immigration cases. In addition, a special guardian can be indispensable in identifying the needs of a child when language and cultural barriers prevent an attorney from communicating effectively with the child.

Our bill will require that these vulnerable children receive the representation they need to see that their rights are protected, and the care they deserve to see their needs are properly considered as they go through complicated immigration proceedings.

The vast majority of these children are not criminals, and they should not be treated as criminals. We must prevent the use of detention in these cases. Children who are not a danger to others or a flight risk should be released to their families or appropriate care-givers. Our bill requires the release of children whenever possible, and supports the expanded use of shelters and foster care for children who do not have such care givers. Other needed protections in the bill will establish standards for detention, better training for immigration personnel on these issues, and more effective opportunities for permanent protection.

We look forward to working with our colleagues to enact these long overdue

safeguards. It is time to end the gross abuses in our current immigration system and to ensure that the best interests of these children are fully protected and respected.

By Mrs. FEINSTEIN:

S. 1130. A bill for the relief of Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to offer legislation to provide lawful permanent residence status to Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, Mexican nationals who live in the Fresno area of California.

Mr. and Mrs. Arreola have lived in he United States for nearly 20 years. They are the parents of Nayely and Cindy, who also stand to benefit from this legislation. The Arreolas also have three United States citizens children: Roberto, who is 11 year old; Daniel, who is 8; and Saray, their youngest daughter, who is six-years old. Today, Mr. and Mrs. Arreola, and her children face deportation.

The story of the Arreola family is quite compelling and I believe they merit Congress' special consideration for humanitarian relief. The Arreolas are in uncertain situation in part because of grievous errors committed by their previous counsel, who has since been disbarred. In fact, the attorney's conduct was so egregious that it compelled an immigration judge to write the Executive Office of Immigration Review seeking his disbarment for the legal detriment he caused his immigrant clients.

Mr. Arreola has lived in the United States since 1986. He was an agricultural migrant worker in the fields of California for several years, and as such would have been eligible for permanent residence through the Seasonal Agricultural Workers, SAW, program had he known that he could apply for it. Mrs. Arreola was living in the United States at the time she became pregnant with her daughter Cindy, but returned to Mexico to give birth to Cindy to avoid any problems with the Immigration and Naturalization Service. It is quite likely that the family would have qualified for cancellation of removal but for the conduct of their previous attorney.

Perhaps one of the most compelling reasons for permitting the family to remain in the United States is the devastating impact their deportation would have on their children: three of whom are U.S. citizens; the other two have lived in the United States virtually all of their lives. This country is the only the country they really know.

Nayely, the oldest child, is a junior in high school. She is an outstanding student with a 3.91 Grade Point Average who ranks fourth in her class of approximately 300 students. At her relatively young age, Nayely has demonstrated a strong commitment to the ideals of citizenship in her adopted country. She has worked hard to achieve her full potential both in her academic endeavors and through the service she provides her community.

Nayely is a member of Advancement Via Individual Determination, AVID, a college preparatory program in which students commit to determining their own futures through achieving a college degree. Nayely is also President of the key Club, a community service organization. She helps mentor freshmen and participates in several other student organizations in her school. Perhaps the greatest hardship to this family if she is forced to return to Mexico will be her lost opportunity to realize here dreams and further contribute to her community and to this country.

As the principal of her high school wrote, ''[s]he epitomizes what we seek to instill in all of our students. She has accepted the challenges and has made a commitment to better her future, to better her life, and to better herself through education.''

It is clear to me that Nayely feels a strong sense of responsibility for her community and country. By all indication, this is the case as well for all of the members of her fine family.

I understand that the Arreolas also have other family who are lawful permanent residents here in the United States. Mrs. Arreola also has three brothers who are U.S. citizens and Mr. Arreola has a sister who is a U.S. citizen. It is my understanding that they do not have any family to whom they might return in Mexico.

According to immigration authorities, this family has never had any problems with law enforcement. I am told that they have filed their taxes for every year from 1990 to the present. They have always worked hard to support themselves. As I previously mentioned, Mr. Arreola was previously employed as a farmworker, but now has his own business repairing electronics. His business has been successful enough to enable him to purchase a home for his family.

It seems so clear to me that this family has embraced the American dream and their continued presence in our country would do so much to enhance the values we hold dear. Enactment of the legislation I have introduced today will enable the Arreolas to continue to make significant contributions to their community and to the United States as well.

I ask unanimous consent that the letter of Xavier De La Torre, Principal of Granite Hills High School, as well as the numerous letters of support our office has received from members of the Porterville community be entered into the RECORD. I also ask unanimous consent that Nayely's essay entitled ''If I Could Change the World,'' which she wrote at age 15, be printed in the RECORD.

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

GRANITE HILLS HIGH SCHOOL,
Porterville, CA, May 7, 2003.

DEAR SENATOR FEINSTEIN: It is with a sense of urgency that I write this letter in support of Nayely Arreola, a student at Granite Hills High School. I have known Nayely for the past three years and have found her to be an outstanding student and a fine young lady with many of the personal attributes I would want for my own daughters.

Nayely is a leader and a pioneer. She is among a very small cadre of second language learners that have overcome seemingly insurmountable conditions and adversities many of us will never know and emerged as a respected scholar. She is a classic success story. Nayely, with her spirit and drive, has helped open and establish Granite Hills High School, the newest high school in our community. She epitomizes what we seek to instill in all of our students. She has accepted the challenges and has made a commitment to better her future, to better her life, and to better herself, through education. Her leadership qualities were evident immediately, as she became very involved in the Link Crew program, the American Cancer Society's Relay for Life, the Porterville Celebrates Reading program, and the Key Club.

As a first time principal of a new high school, I rely on students like Nayely to establish a strong foundation for our school. She and others like her have been instrumental in all the success that we have had as a school in a relatively short period of time. Much of this success has come on the heels of adverse conditions. She is resilient and sees life from an optimistic lens, something very difficult to teach.

As a student, Nayely is well liked by her peers, teachers, and our learning community in general. A top student in her class, Nayely is studious, polite, possesses a staunch work ethic, and is determined to succeed in any endeavor she pursues. I attribute this attitude to her parental upbringing, her sense of moral obligation and a strong value system. I have all the confidence in the world that Nayely will be successful in life.

If there are any further questions, or if elaboration is required, please contact me at your convenience.

Sincerely,

XAVIER DE LA TORRE,
Principal, Granite Hills High School.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA, May 7, 2003.

DEAR SENATOR FEINSTEIN: Nayely Arreola is one of the most conscientious students I have even had in school. When I first met her last year, she introduced herself and said she would be the top student in my advanced Placement U.S. History class. As it turned out, schedule conflicts forced her into a college prep class, but her intentions and performance remained the same. She has been one of the very top academic students. She also has demonstrated a deep sense of patriotism and commitment to our country. Often times in discussion, she has been the first to voice her support of government policies and has an understanding of the complex reasoning behind difficult decisions legislators and other elected government people must make. In all the process of having to return to Mexico, she has never once been negative or derogatory towards the laws and procedures. Of all the people who should be given residency, Nayely and her family should be at the top of the list. They have demonstrated their dependability, loyalty, hard work and individual responsibility in their lives in this country. There is the ''letter of the law'' and there is then the ''spirit of the law.'' The Arreolas are a family that truly deserve the ''spirit of the law'' in allowing them to stay and become officially

citizens. They have consistently demonstrated their intentions to be such for the last decade or more.

SALLY HOWEN,
Social Science
Chair, Granite Hills High School.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA, May 7, 2003.

DEAR SENATOR FEINSTEIN: Nayely Arreola is an outstanding person. Having taught 30 years, I've met few students who are as dedicated to working to improve themselves as Nayely. Not only is she hard working, she is very intelligent. Nayely was in my Geometry class two years ago and she not only worked hard but she also has a wonderful understanding of the connectedness of mathematics. She was always ready and willing to help others who might not understand.

Nayely is more than just a shining example of a student, she is also one of the nicest students I've ever had. She is always courteous and respectful to everyone. I have never seen her act unkindly to anyone around campus. She is the type of person of intelligence, character and integrity that this country desperately needs.

Nayely has the qualities that will make her a leader and a peacekeeper in whatever situation she finds herself. If she is deported to Mexico, she will do well there and enrich that country. My hope and prayer is that she can stay and enrich this country.

If there is anything I can do to help in her family's need, please contact me.

Sincerely,

CAROL BENTZ,
Teacher, Granite Hills High School.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA.

SENATOR DIANE FEINSTEIN: My name is Filomena Lewis and I serve as the chairperson for the World Language Department here at Granite Hills High School. I am pleased to be writing this letter on behalf of Nayely Arreola.

It has been a pleasure having Nayely as my student. She is among the top students in my Advance Placement Spanish Language class. Nayely functions effectively in both leadership and group roles. Her properly developed social skills are well received by her peers.

Nayely is a terrific young lady. I have no doubt in my mind that she will be a contributing asset to our society. I highly recommend, with utmost regard, that Nayely be extended every possible consideration to allow her to complete this portion of her education at Granite Hills High School.

Respectfully,

FILOMENA ROCHA LEWIS.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA, May 13, 2003.

TO WHOM IT MAY CONCERN: It is a great pleasure to write this letter for Nayely Arreola. One of Granite Hills High School's most distinguished high academic students, Nayely is a junior, the daughter of Esidronio and Maria Elena Arreola, 1384 E. Success Dr., Porterville, CA (559) 782–3278.

Nayely is currently earning a total grade point average of 3.9. She is enrolled in a college preparatory program called AVID and is taking Advanced Placement Spanish Literature 3 and Advanced Placement English 3P. She also has nearly perfect attendance.

Not only is Nayely excelling in academics, she also excels and participates in various curricular and extracurricular activities on and off campus. Including Grizzly basketball and clubs. She also participates in her church youth group activities at her church.

Nayely hopes to attend University of California upon graduating from Granite Hills High School, where she will major in medicine. Nayely also hopes to see how far she can go with an honors program.

When asked what she liked about school, especially Granite Hills, she said the instructors, classes and the academic programs, especially AVID. She is our top AVID student in the program.

Nayely across the years has also received many honors and awards. Some of those being for leadership and the Renaissance Academic Program here at Granite Hills. She has also been on the Honor Roll for three years.

I know this student has all the tools to be successful in life. She will definitely be a very successful individual.

I know Nayely on a personal basis. She has done so much to be where she's at. She has achieved so many things because of her efforts and motivation. She deserves so much in life. I feel very proud of her.

RAUL B. BERMUDEZ,
Guidance Tech., Granite Hills High School.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA.

DEAR SENATOR FEINSTEIN: It is with a grateful heart I write to thank you for your recent support of Nayely Arreola and her family. It has been my extreme pleasure to work with Nayely at Granite Hills High for the past three years. Nayely is by far one of the hardest working students I have met in my twenty years of teaching. She is currently ranked fourth in a class of three hundred students and has received honors here at Granite Hills High. Recently she was selected as the runner-up to Girls State. She is the President of the Key Club where she has assisted in food, coat and toy drives for the needy of our community. She is a LINK leader, which works with freshmen, and I have known her as one of my prized speech students. Last year she won the Club and Zone levels of the Optimist Speech Contest and this year she was a Club winner in the Lions Club Speech Contest.

It has surprised many that I, a conservative Republican, would try to assist Nayely and her family with their problem of gaining residency her in the United States. I believe our country was founded with people just like the Arreola family who came here with a dream to improve their lives and the lives of their family. The Arreola family has proved that they are honest, hard working, tax paying people. It is unfortunate that they received poor advice from their first attorney that caused them to have their case sent to the deportation court. I truly believe if they had received proper representation they would have received residency long ago.

Nayely Arreola is more than a remarkable student, she is a remarkable person. Everything she has done has been to prepare here to go to a University here in the United States. I spent almost a year teaching in Mexico and I beg our Congress not to send her there. She is America's dream—her contribution to our country will be great. I have watched with great pride as she has grown into a wonderful young lady, ready to take on the world.

Once again, I thank you for all your help.

CHRISTINE L. AMANN,
Reading Specialist/Speech Coordinator.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA, May 14, 2003.

TO WHOM IT MAY CONCERN: It is with great pleasure that I write this letter on behalf of Nayely Arreola, a student of mine at Granite Hills High School.

Nayely is currently enrolled in my Chemistry class. She has proven herself to be a conscientious, intelligent, hard-working young lady. She consistently has the highest grade in her class and often goes ''above and beyond'' on her assignments.

I strongly support Nayely and her family in their quest for legal residence in this country. I have no doubt Nayely will one day be a successful, contributing member of our society. She has the drive and determination to achieve any goal she desires.

Sincerely,

SARA E. SILVA,
Chemistry Teacher,
Granite Hills High School.

GRANITE HILLS HIGH SCHOOL,
Porterville, CA.

Nayely Arreola is one of my top 5 Pre-calculus/Trig students. This student is basically a model student. She is the kind of student that teachers dream about. She is self-motivated, intelligent, has a good heart, sincere, involved, etc. etc. etc. Every teacher should get an opportunity to have such a student.

It is truly sad that our government doesn't allow such students to remain in the U.S. These kinds of students are the ones that will help our country grow stronger. Students like Nayely are the kind of resources this country needs. I am in disbelief that other students that have no respect for authority, do not care for education, and eventually, we will have to pay for their existence in one way or another, are allowed to stay. Yet great hard working people like the Arreola family are obligated to leave this country.

The qualities that Nayely possesses are indeed rare. If our students possessed half of her qualities we would be second to no nation in terms of education. We can not afford to lose these precious resources. If our country is to grow stronger we must change our way of thinking. We must change our laws. We must attract people like Nayely and abolish those that harm our country. We are hurting ourselves by forcing Nayely Arreola to leave this country. Howe can politics be so blind?

Truly,

JOSE VELAZQUEZ,
Granite Hills High School
Trigonometry teacher.

IF I COULD CHANGE THE WORLD . . .

(By Nayely B. Arreola)

The world has changed dramatically throughout the years. Disrespect, abuse, and quick judgment are major factors that have caused human suffering. They are my main concern because we need to value individuality. In my speech today I am going to talk about three ways I feel we could change the world.

If I could change our interactions with elderly people, the world would be a better place. I disagree with the pessimistic attitude that some young Americans take towards the elderly. Our country should honor and respect our senior citizens. For example, in other countries convalescent homes do not exist, because family members take care of their older family members. They demonstrate an appreciation, and respect by giving their elderly person a special significance in their own life. The children take care of the parents when they grow older and cannot do it themselves. The sons or daughters give their loved ones a special value and view age as a wonderful experience because they can learn from the elderly family members. If this were not possible, then I would change the convalescent homes from a hospital environment to more of a home environment. In order to ensure better treatment of the elderly the main focus should be on their dignity, comfort, and well-being.

By keeping the elderly at home, the children can receive love and attention from

someone other than their parents. Some kids come home to empty houses when their parents are working hard to maintain their career. Instead of watching TV, they can actually learn something about themselves and the origin of their family history. In order to change the world, we should appreciate our elderly people because they have a lot to offer us.

Elderly people have a lot to teach us about the world, society, and culture because they have grown wise throughout the years. They can help us learn from their mistakes so that we won't have to go through it again and learn the hard way. It is an honor to sit by them and hear so many things that they have encountered during their lifetime. We have degraded the value of age in America drastically by placing so much emphasis on youth and looking youthful.

Second, we have degraded the beauty of other races. I would make people colorblind, so that they would not care about a person's color or race. Prejudice ignores a person's character, causing one person to feel superior over another person. Racism has caused conflicts and problems throughout history. A person who is racist does not know the big mistake that he or she is making. They fail to truly meet the wonderful people who they neglect.

Furthermore, another thing that I would change in the world is the suffering and abuse of an innocent child. Children are gifts from heaven, but when they go through a life of torment or anguish, they reflect that later in their lives. These children have low self-esteem.

Most of them repeat the same type of abuse toward their children, causing the chain to repeat itself, again and again throughout generations. The life of an abused child is a sad life. If child suffering were eliminated, we would have happier children, thus healthier adults. They would be prepared to succeed in the light of success and would not be left in the darkness of despair. It would make them view the world as a wonderful place.

In conclusion, I cannot change the world into a wonderful place or impact it without changing myself. If I were able to change the world, I would begin with myself and erase all evil within my heart, in hopes of setting an example for others to follow. I can only change one life at a time in order to change the world into honoring the life of an individual. We cannot disrespect the elderly, judge a person by their color or abuse a child who in its innocence didn't ask to be born. We should show respect and dignity without caring the size, age or color. We should get past the fashion, clothes, and looking good in order for us to truly be compassionate to see what lies in the depths of a person's heart. In order to change our world the answer is definitely in changing the hearts of our people. We must all do our part. Today I have accepted this challenge—I ask you can you?

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

S. 1131. A bill to increase, effective December 1, 2003, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I have sought recognition to comment on legislation I am introducing today to provide a cost-of-living, COLA, adjustment for certain veterans' benefits programs. This COLA adjustment would affect payments made to nearly 3 million Department of Veterans Affairs, VA, beneficiaries, and would be reflected in beneficiary checks that are received in January 2004, and thereafter.

An annual cost-of-living adjustment in veterans benefits is an important tool which protects veterans' cash-transfer benefits against the corrosive effects of inflation. The principal programs affected by the adjustment would be compensation paid to disabled veterans, and dependency and indemnity compensation, DIC, payments made to the surviving spouses, minor children and other dependents of persons who died in service, or who died after service as a result of service-connected injuries or diseases.

The President's budget anticipates inflation to be at a two percent level at the close of this year as measured by the consumer price index, CPI, published by the Department of Labor's Bureau of Labor Statistics. If inflation is held to the 2 percent level, that will be the level of COLA adjustment under this legislation since it ties the increase directly to the CPI increase as measured by the Department of Labor. Whatever the CPI increase eventually turns out to be, however, veterans' and survivors' benefits payments must be protected by being increased by a like amount. The Congress already concurred with that judgment with the recent passage of the budget resolution; that resolution sets aside the funds necessary to finance the COLA increase envisioned by this legislation.

I ask my colleagues to support this vital legislation.

I yield the floor, and 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. 1131

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 ''Veterans' Compensation Cost-of-Living Adjustment Act of 2003''.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2003, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under sections 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2003.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2003, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2004, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

By Mr. SPECTER (for himself, Mr. BUNNING, and Mr. GRAHAM of South Carolina):

S. 1132. A bill to amend title 38, United States Code, to improve and enhance certain benefits for survivors of veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I have sought recognition to comment on legislation I have introduced today to further honor the sacrifices made by the family members of those who were killed or injured in service to our country. As we celebrate the victory won on the battlefield in Iraq, we must remember that the loss of American lives—even a relative few—was a sobering price to pay.

The loss of life in service is most acutely felt by the spouses and children left behind. For them, we must make every effort—however inadequate that effort might be in comparison to the enormity of their loss—to recognize their needs. This bill attempts to do so by increasing educational assistance benefits for survivors, by providing additional dependency and indemnity compensation payments for

bereaved families, by authorizing a remarried spouse to be buried in a national cemetery with his or her deceased veteran-spouse, and by providing health, training and compensation benefits to children of certain veterans who served in or near the Korean demilitarized zone, DMZ, in the late 1960s, and who were born with Agent Orange-induced spina bifida.

The legislation I introduce today would increase the rate of monthly Survivors' and Dependents' Education Assistance, DEA, benefits from $680 to $985. DEA benefits are provided to the spouses and children of veterans who were killed, or profoundly wounded, in service. The increase I propose today would create parity between DEA benefits and veterans' educational assistance, Montgomery GI Bill, benefits. Such parity was recommended by a recent Department of Veterans Affairs, VA, program evaluation and is dictated by the common sense observation that college tuition is no less expensive for widows and orphans than it is for veterans.

Under this legislation, DEA-eligible survivors, like Montgomery GI Bill beneficiaries, would receive an aggregate of $35,460 worth of education benefits—$985 monthly for a total of 36 months. Thus, both veterans and survivors would have the resources necessary to meet the average cost of tuition, fees, and room and board at four-year, public institutions of higher learning. As was stated by VA's Deputy Secretary, Dr. Leo Mackay, at a Committee on Veterans Affairs hearing on June 28, 2001, VA ''believe[s] it is only fair that these benefits should be at the same level as those provided to veterans.'' VA estimates that a monthly benefit at that level will entice 90% of eligible persons to use the benefit.

This legislation would also put into effect a key policy recommendation made by a VA-contracted study examining the adequacy of survivors' Dependency and Indemnification Compensation, DIC, benefit. The 2001 study called for the DIC benefit—the basic rate of which is now set at $948 per month—to be increased by $250 per month during the 5-year period following the death of a veteran to further ease the transition of surviving spouses with dependent children. The contractor study based its recommendations on the reported income needs and expenses of DIC recipients; it found that spouses with children reported higher levels of unmet need than spouses without children—even though spouses with dependent children already receive an additional $237 in monthly DIC benefits per child. In short, the contractor found that while widows with children are already afforded additional DIC benefits, they need more.

In July 2001, VA estimated that there were approximately 14,500 surviving spouses with dependent children. Reading the profiles of some of the young men and women who lost their lives in Iraq, I know that several spouses will, sadly, be added to that number. This provision of my bill is a small way to further recognize the needs of families based on an objective assessment of what those needs are.

Section four of this bill would codify a practice that VA routinely allows through a waiver process. Under current practice, when the remarried widow of a deceased veteran dies, her second husband must grant VA permission before VA will allow, under a waiver process, the widow to be buried in a national cemetery with her deceased veteran-husband. A woman, for example, who was married for 50 years to a World War II veteran and who remarries late in life after her first husband dies should not have to depend on a waiver process to ensure burial with her first husband. Remarried spouses whose second marriages end due to death or divorce have a statutory right to burial with their deceased veteran-spouse. The same statutory right should be afforded to remarried spouses who, though married at death, never lost their desire to be united with a prior spouse already at rest in a national cemetery.

Finally, my legislation would provide benefits to spina bifida children of veterans who served in or near the Korean DMZ between 1967 and 1969. Benefits would be provided on the same basis, and under the same rationale, as they are to children of Vietnam veterans who are born with spina bifida. In 1996, Congress authorized benefits for Vietnam children born with spina bifida based on evidence reported by the Institute of Medicine of an association between exposure to Agent Orange and the appearance of the birth defect spina bifida in a veteran's offspring. The same contaminant found in Agent Orange—dioxin—was also used to clear brush in and near the Korean DMZ during the late 1960s. Indeed, veterans who served near the Korean DMZ during that time are already presumed by VA to have been exposed to herbicides, unless military records demonstrate otherwise, and they are, accordingly, already awarded compensation on a presumptive basis if they fall ill from conditions presumed by law to be presumptively service-connected for Vietnam veterans. VA, however, exercises no such latitude in addressing the needs of the children of Korean DMZ veterans born with spina bifida. It should—and this bill would direct VA to do so.

I first learned of this inequity from Mr. John Ruzalski, a resident of Hawley, PA. Mr. Ruzalski is a Korean DMZ veteran whose 27-year-old son suffers from spina bifida. I am grateful to Mr. Ruzalski for his service in Korea, and for bringing this matter to light, and am hopeful that the Congress can reward his vigilance on behalf of his son. Clearly, it makes no sense for VA to presume that Korean DMZ veterans should be treated like Vietnam veterans for purposes of compensating the veteran's service-related illnesses and yet treat their spina bifida children differently.

In summary, the provisions of this legislation will make a difference in the lives of those who fallen servicemembers loved even more than country—their families. I ask my colleagues for their support.

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. 1132

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 ''Veterans' Survivors Benefits Enhancements Act of 2003''.

SEC. 2. INCREASE IN RATES OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.

(a) SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.—Section 3532 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''at the monthly rate of'' and all that follows and inserting ''at the monthly rate of $985 for full-time, $740 for three-quarter-time, or $492 for half-time pursuit.''; and

(B) in paragraph (2), by striking ''at the rate of'' and all that follows and inserting ''at the rate of the lesser of—

''(A) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay; or

''(B) $985 per month for a full-time course.'';

(2) in subsection (b), by striking ''$670'' and inserting ''$985''; and

(3) in subsection (c)(2), by striking ''shall be'' and all that follows and inserting ''shall be $795 for full-time, $596 for three-quarter-time, or $398 for half-time pursuit.''.

(b) CORRESPONDENCE COURSES.—Section 3534(b) of that title is amended by striking ''$670'' and inserting ''$985''.

(c) SPECIAL RESTORATIVE TRAINING.—Section 3542(a) of that title is amended—

(1) by striking ''$670'' and inserting ''$985''; and

(2) by striking ''$210'' each place it appears and inserting ''$307''.

(d) APPRENTICESHIP TRAINING.—Section 3687(b)(2) of that title is amended by striking ''shall be $488 for the first six months'' and all that follows and inserting ''shall be $717 for the first six months, $536 for the second six months, $356 for the third six months, and $179 for the fourth and any succeeding six-month period of training.''.

(e) EFFECTIVE DATE.—(1) The amendments made by this section shall take effect on October 1, 2003, and shall apply with respect to educational assistance allowances payable under chapter 35 and section 3687(b)(2) of title 38, United States Code, for months beginning on or after that date.

(2) No adjustment in rates of monthly training allowances shall be made under section 3687(d) of title 38, United States Code, for fiscal year 2004.

SEC. 3. MODIFICATION OF DURATION OF EDUCATIONAL ASSISTANCE.

Section 3511(a)(1) of title 38, United States Code, is amended by striking ''45 months'' and all that follows and inserting ''45 months, or 36 months in the case of a person who first files a claim for educational assistance under this chapter after the date of the

enactment of the Veterans' Survivors Benefits Enhancements Act of 2003, or the equivalent thereof in part-time training.''.

SEC. 4. ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN.

(a) ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1311 of title 38, United States Code, is amended by adding at the end the following new subsection:

''(e)(1) Subject to paragraphs (2) and (3), if there is a surviving spouse with one or more children below the age of eighteen, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $250, regardless of the number of such children.

''(2) Dependency and indemnity compensation shall be increased for a month under this subsection only for months occurring during the five-year period beginning on the date of death of the veteran on which such dependency and indemnity compensation is based.

''(3) The increase in dependency and indemnity compensation of a surviving spouse under this subsection shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of eighteen.

''(4) Dependency and indemnity compensation under this subsection is in addition to any other dependency and indemnity compensation payable by law.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5. ELIGIBILITY OF SURVIVING SPOUSES WHO REMARRY FOR BURIAL IN NATIONAL CEMETERIES.

(a) IN GENERAL.—Section 2402(5) of title 38, United States Code, is amended by striking ''(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)'' and inserting ''(which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to deaths occurring on or after January 1, 2000.

SEC. 6. BENEFIT FOR CHILDREN WITH SPINA BIFIDA OF VETERANS OF CERTAIN SERVICE IN KOREA.

(a) IN GENERAL.—Chapter 18 of title 38, United States Code, is amended—

(1) by redesignating subchapter III, and sections 1821, 1822, 1823, and 1824, as subchapter IV, and sections 1831, 1832, 1833, and 1834, respectively; and

(2) by inserting after subchapter II the following new subchapter III:

''SUBCHAPTER III—CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA

''§ 1821. Benefits for children of certain Korea service veterans born with spina bifida

''(a) BENEFITS AUTHORIZED.—The Secretary may provide to any child of a veteran of covered service in Korea who is suffering from spina bifida the health care, vocational training and rehabilitation, and monetary allowance required to be paid to a child of a Vietnam veteran who is suffering from spina bifida under subchapter I of this chapter as if such child of a veteran of covered service in Korea were a child of a Vietnam veteran who is suffering from spina bifida under such subchapter I.

''(b) SPINA BIFIDA CONDITIONS COVERED.—This section applies with respect to all forms and manifestations of spina bifida, except spina bifida occulta.

''(c) VETERAN OF COVERED SERVICE IN KOREA.—For purposes of this section, a veteran of covered service in Korea is any individual, without regard to the characterization of that individual's service, who—

''(1) served in the active military, naval, or air service in or near the Korean demilitarized zone (DMZ), as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 1, 1967, and ending on December 31, 1969; and

''(2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to a herbicide agent during such service in or near the Korean demilitarized zone.

''(d) HERBICIDE AGENT.—For purposes of this section, the term 'herbicide agent' means a chemical in a herbicide used in support of United States and allied military operations in or near the Korean demilitarized zone, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 1, 1967, and ending on December 31, 1969.''.

(b) CHILD DEFINED.—Section 1831 of that title, as redesignated by subsection (a), is further amended by striking paragraph (1) and inserting the following new paragraph (1):

''(1) The term 'child' means the following:

''(A) For purposes of subchapters I and II of this chapter, an individual, regardless of age or marital status, who—

''(i) is the natural child of a Vietnam veteran; and

''(ii) was conceived after the date on which that veteran first entered the Republic of Vietnam during the Vietnam era.

''(B) For purposes of subchapter III of this chapter, an individual, regardless of age or marital status, who—

''(i) is the natural child of a veteran of covered service in Korea (as determined for purposes of section 1821 of this title); and

''(ii) was conceived after the date on which that veteran first entered service described in subsection (c) of that section.''.

(c) NONDUPLICATION OF BENEFITS.—Section 1834(a) of that title, as redesignated by subsection (a), is further amended by adding at the end the following new sentence: ''In the case of a child eligible for benefits under subchapter I or II of this chapter who is also eligible for benefits under subchapter III of this chapter, a monetary allowance shall be paid under the subchapter of this chapter elected by the child.''.

(d) CONFORMING AMENDMENT.—(1) Section 1811(1)(A) of that title is amended by striking ''section 1821(1)'' and inserting ''section 1831(1)''.

(2) The heading for chapter 18 of that title is amended to read as follows:

''CHAPTER 18—BENEFITS FOR CHILDREN OF VIETNAM VETERANS AND CERTAIN OTHER VETERANS''.

(e) CLERICAL AMENDMENTS.—(1) The table of sections at the beginning of chapter 18 of that title is amended by striking the items relating to subchapter III and inserting the following new items:

''SUBCHAPTER III—CHILDREN OF CERTAIN KOREA SERVICE VETERANS BORN WITH SPINA BIFIDA

''1821. Benefits for children of certain Korea service veterans born with spina bifida.

''SUBCHAPTER IV—GENERAL PROVISIONS

''1831. Definitions.
''1832. Applicability of certain administrative provisions.
''1833. Treatment of receipt of monetary allowance and other benefits.
''1834. Nonduplication of benefits.''.

(2) The table of chapters at the beginning of title 38, United States Code, and at the beginning of part II of such title, are each amended by striking the item relating to chapter 18 and inserting the following new item:

''18. Chapter 18—Benefits for Children of Vietnam Veterans and Certain Other Veterans ..... 1802''.

By Mr. SPECTER (by request):

S. 1133. A bill to amend title 38, United States Code, to improve the authorities of the Department of Veterans Affairs relating to compensation, dependency and indemnity compensation, pension, education benefits, life insurance benefits, and memorial benefits, to improve the administration of benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I have today introduced, at the request of the Secretary of Veterans Affairs, S.1133, the proposed ''Veterans Programs Improvement Act of 2003.'' The Secretary of Veterans Affairs has submitted this proposed legislation to the President of the Senate by letter dated April 25, 2003.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all Administration-proposed draft legislation referred to the Committee on Veterans' Affairs. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD, together with the transmittal letter and a section-by-section analysis which accompanied it.

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

S. 1133

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

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This act may be cited as the ''Veterans Programs Improvement Act of 2003''.

(b) REFERENCES.—Except as otherwise expressly provided, wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2003, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114;

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1);

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162;

(4) NEW DIC RATES.—Each of the dollar amounts in effect under paragraphs (1) and (2) of section 1311(a);

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3);

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b);

(7) ADDITIONAL DIC FOR DISABILITY.—Each of the dollar amounts in effect under subsections (c) and (d) of section 1311; and

(8) DIC FOR DEPENDENT CHILDREN.—Each of the dollar amounts in effect under sections 1313(a) and 1314.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2003.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2003, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law No. 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(e) PUBLICATION OF ADJUSTED RATES.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2004, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) as increased pursuant to subsection (a).

SEC. 3. REPEAL OF 45-DAY RULE FOR EFFECTIVE DATE OF AWARD OF DEATH PENSION.

Subsection (d) of section 5110 is amended—

(1) by striking the designation ''(1)'';

(2) by striking ''death compensation or dependency and indemnity compensation'' and inserting ''death compensation, dependency and indemnity compensation, or death pension''; and

(3) by striking paragraph (2).

SEC. 4. EXCLUSION OF LUMP-SUM LIFE INSURANCE PROCEEDS FROM DETERMINATIONS OF ANNUAL INCOME FOR PENSION PURPOSES.

Subsection (a) of section 1503 is amended—

(1) by striking ''and'' at the end of paragraph (9);

(2) by striking ''materials.'' at the end of paragraph (10)(B) and inserting ''materials; and''; and

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

''(11) lump-sum proceeds of any life insurance policy or policies on a veteran, for purposes of pension under subchapter III of this chapter.''.

SEC. 5. CLARIFICATION OF PROHIBITION ON PAYMENT OF COMPENSATION FOR ALCOHOL OR DRUG-RELATED DISABILITY.

(a) CLARIFICATION.—Chapter 11 is amended—

(1) in section 1110, by striking ''drugs.'' and inserting ''drugs, even if the abuse is secondary to a service-connected disability.''; and

(2) in section 1131, by striking ''drugs.'' and inserting ''drugs, even if the abuse is secondary to a service-connected disability.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any claim—

(1) filed on or after the date of enactment of this Act; or

(2) filed before the date of enactment of this Act and not finally decided as of that date.

SEC. 6. ALTERNATIVE BENEFICIARIES FOR NATIONAL SERVICE LIFE INSURANCE AND UNITED STATES GOVERNMENT LIFE INSURANCE.

(a) NATIONAL SERVICE LIFE INSURANCE.—(1) Section 1917 is amended by adding at the end the following new subsection:

''(f)(1) Following the death of the insured and in a case not covered by subsection (d)—

''(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the death of the insured, payment may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and

''(B) if, within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment may (notwithstanding any other provision of law) be made to such person as may in the judgment of the secretary be equitably entitled thereto.

''(2) Payment of insurance under paragraph (1) shall be a bar to recovery by any other person.''.

(b) UNITED STATES GOVERNMENT LIFE INSURANCE.—Section 1952 is amended by adding at the end the following new subsection:

''(c)(1) Following the death of the insured and in a case not covered by section 1950 of this title—

''(A) if the first beneficiary otherwise entitled to payment of the insurance does not make a claim for such payment within two years after the death of the insured, payment may be made to another beneficiary designated by the insured, in the order of precedence as designated by the insured, as if the first beneficiary had predeceased the insured; and

''(B) if, within four years after the death of the insured, no claim has been filed by a person designated by the insured as a beneficiary and the Secretary has not received any notice in writing that any such claim will be made, payment may (notwithstanding any other provision of law) be made to such person as may in the judgment of the Secretary be equitably entitled thereto.

''(2) Payment of insurance under paragraph (1) shall be a bar to recovery by any other person.''.

(c) TRANSITION PROVISION.—In the case of a person insured under subchapter I or II of chapter 19, title 38, United States Code, who dies before the date of the enactment of this Act, the two-year and four-year periods specified in subsection (f)(1) of section 1917 of title 38, United States Code, as added by subsection (a), and subsection (c)(1) of section 1952 of such title, as added by subsection (b), as applicable, shall for purposes of the applicable subsection be treated as being the two-year and four-year periods, respectively, beginning on the date of the enactment of this Act.

SEC. 7. TIME LIMITATION ON RECEIPT OF CLAIM INFORMATION PURSUANT TO REQUEST BY DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Section 5102 is amended by adding at the end the following new subsection:

''(c) TIME LIMITATION.—(1) If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary within one year from the date of such notification, no benefit may be paid or furnished by reason of the claimant's application.

''(2) This subsection shall not apply to any application or claim for Government life insurance benefits.''.

(b) REPEAL OF SUPERSEDED PROVISIONS.—Section 5103 is amended—

(1) by striking ''(a) REQUIRED INFORMATION AND EVIDENCE.—''; and

(2) by striking subsection (b).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted on November 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000 (Public Law 106–475; 114 Stat. 2096).

SEC. 8. BURIAL PLOT ALLOWANCE.

(a) Subsection (b) of section 2303 is amended—

(1) in the matter preceding paragraph (1), by striking ''a burial allowance under such section 2302, or under such subsection, who was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, or who is a veteran of any war'' and inserting ''burial in a national cemetery under section 2402 of this title''; and

(2) in paragraph (2), by striking ''(other than a veteran whose eligibility for benefits under this subsection is based on being a veteran of any war)'' and inserting ''is eligible for a burial allowance under section 2302 of title or under subsection (a) of this section, or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, and such veteran''.

(b) Section 2307 is amended in the last sentence by striking ''and (b)'' and inserting ''and (b)(2)''.

SEC. 9. PROVISION OF MARKERS FOR PRIVATELY MARKED GRAVES.

(a) IN GENERAL.—Subsection (d) of section 502 of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 995), as amended by section 203 of the Veterans Benefits Act of 2002 (Public Law 107–330; 116 Stat. 2824), is further amended by striking ''September 11, 2001'' and inserting ''November 1, 1990''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 502 of Public Law 107–103.

SEC. 10. EXPANSION OF BURIAL ELIGIBILITY FOR REMARRIED SPOUSES.

(a) IN GENERAL.—Paragraph (5) of section 2402 is amended by striking ''(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)'' and inserting ''(which for purposes of this chapter includes a surviving spouse who remarries following the veteran's death)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to deaths occurring on or after the date of the enactment of this Act.

SEC. 11. MAKE PERMANENT AUTHORITY FOR STATE CEMETERY GRANTS PROGRAM.

(a) PERMANENT AUTHORIZATION.—Paragraph (2) of section 2408(a) is amended—

(1) by striking ''for fiscal year 1999 and for each succeeding fiscal year through fiscal year 2004''; and

(2) by adding at the end ''Funds appropriated under the preceding sentence shall remain available until expended.''.

(b) TECHNICAL AMENDMENT.—Subsection (e) of section 2408 is amended by striking ''Sums appropriated under subsection (a) of this section shall remain available until expended.''.

SEC. 12. FORFEITURE OF BENEFITS FOR SUBVERSIVE ACTIVITIES.

(a) ADDITION OF CERTAIN OFFENSES.—Paragraph (2) of section 6105(b) is amended by striking ''sections 792, 793, 794, 798, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18'' and inserting ''sections 175, 229, 792, 793, 794, 798, 831, 1091, 2332a, 2332b, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to claims filed after the date of the enactment of this Act.

SEC 13. VETERANS' ADVISORY COMMITTEE ON EDUCATION.

Section 3692 is amended—

91) in subsection (a), by inserting ''as far as practicable'' after ''include'';

(2) in subsections (a) and (b), by striking ''chapter 106'' and inserting ''chapter 1606'' both places it appears; and

(3) in subsection (c), by striking ''2003'' and inserting ''2013''.

SEC. 14. REPEAL OF EDUCATION LOAN PROGRAM.

(a) TERMINATION OF PROGRAM.—No loans shall be made under subchapter III of chapter 36 after the date of the enactment of this Act, and such subchapter shall be repealed 90 days after such date of enactment.

(b) CLOSING OF LOAN FUND.—All monies in the revolving fund established in the Treasury of the United States of America known as the ''Department of Veterans Affairs Education Loan Fund'' (the ''Fund'') on the day before the date of repeal of such subchapter III shall be transferred to the Department of Veterans Affairs Readjustment Benefits Account, and the Fund shall be closed.

(c) DISCHARGE OF LIABILITY.—The liability on any education loan debt outstanding under such subchapter III shall be discharged, and any overpayments declared under section 3698(e)(1) of that subchapter shall be waived without further process on the date funds are transferred as referred to in subsection (b) of this section.

(d) TECHNICAL AMENDMENT.—On the date of repeal of such subchapter III, as provided herein, the table of sections at the beginning of chapter 36 shall be amended by striking the items relating to subchapter III.

(e) CONFORMING AMENDMENT.—(1) Chapter 34 is amended—

(A) by repealing paragraph (2) of section 3462(a); and

(B) in paragraph (1) of section 3485(e), by striking ''(other than an education loan under subchapter III)''.

(2) Section 3512 is amended by repealing subsection (f).

(3) The amendments made by paragraphs (1)(B) and (2) shall take effect 90 days after the date of the enactment of this Act.

SEC. 15. RESTORATION OF CHAPTER 35 EDUCATION BENEFITS OF CERTAIN INDIVIDUALS.

(a) RESTORATION.—Subsection (h) of section 3512 is amended by inserting ''or is involuntarily ordered to full-time National Guard duty under section 502(f) of title 32'' following ''title 10''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of September 11, 2001.

SEC. 16. EXPANSION OF MONTGOMERY GI BILL EDUCATION BENEFITS FOR CERTAIN SELF-EMPLOYMENT TRAINING.

(a) SELF-EMPLOYMENT TRAINING.—Subparagraph (B) of section 3002(3) is amended—

(1) in clause (i) by striking ''and'';

(2) by adding at the end the following clause:

''(iii) a program of self-employment on-job training approved as provided in section 3677(d) of this title; and''.

(b) PROGRAM APPROVAL.—Section 3677 is amended—

(1) in subsections (a) and (c), by inserting ''self-employment on-job training or'' after ''other than'';

(2) in subsection (b)(1), by inserting ''described in subsection (a)'' after ''offering training''; and

(3) by adding at the end the following new subsection:

''(d)(1) Any State approving agency may approve a program of self-employment on-job training for purposes of chapter 30 of this title only when it finds that the training is generally recognized as needed or accepted for purposes of obtaining licensure to engage in the self-employment occupation or is required for ownership and operation of a franchise that is the objective of the training.

''(2) The training entity offering the training for which approval is sought under this chapter must submit to the State approving agency a written application for approval, in the form and with the content as prescribed by the Secretary, which shall include such information as is required by the State approving agency.

''(3) As a condition for approving a program of self-employment on-job training, the State approving agency must find upon investigation that the following criteria are met:

''(A) The training content is adequate to qualify the eligible individual for the self-employment occupation that is the objective of the training.

''(B) The training consists of full-time training for a period of less than six months.

''(C) The length of the training period is not longer than that customarily required to obtain the knowledge, skills, and experience needed to successfully engage in the particular self-employment occupation that is the objective of the training.

''(D) The training entity has adequate instructional space, equipment, materials, and personnel to provide satisfactory training on the job.

''(E) The training entity keeps adequate records of each trainee's progress toward the self-employment objective and, at the end of the training period, issues a license, certificate, or other document recording the individual's successful completion of the training program.

''(F) The training entity and the self-employment on-job training program meet such other criteria as the Secretary may prescribe and as the State approving agency, with the Secretary's approval, may establish.''.

(c) CONFORMING AMENDMENT.—Paragraph (2) of section 3687(a) is amended by inserting ''subsections (a), (b), and (c) of'' before ''section 3677''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date six months after the enactment of this Act and shall apply to self-employment on-job training approved and pursued on or after that date.

THE SECRETARY OF VETERANS AFFAIRS

Washington, DC, April 25, 2003.

Hon. RICHARD B. CHENEY,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am transmitting a draft bill, the ''Veterans Programs Improvement Act of 2003'. I request that this draft bill be referred to the appropriate committee for prompt consideration and enactment.

INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

Section 2 of the draft bill would direct the Secretary of Veterans Affairs to increase administratively the rates of disability compensation for veterans with service-connected disability and of dependency and indemnity compensation (DIC) for the survivors of veterans whose deaths are service related, effective December 1, 2003. As provided in the Presidents fiscal year (FY) 2004 budget request, the rate of increase would be the same as the cost-of-living adjustment (COLA) that will be provided under current law to Social Security recipients, which is currently estimated to be 2 percent. We believe this proposed COLA is necessary and appropriate to protect the affected benefits from the eroding effects of inflation.

We estimate that enactment of this section would cost $355 million during FY 2004 and $4.3 billion over the period FY 2004 through FY 2013. However, this cost is already assumed in the Budget baseline and, therefore, would not have any effect on direct spending.

REPEAL OF 45-DAY RULE FOR EFFECTIVE DATE OF AWARD OF DEATH PENSION AND EXCLUSION OF LUMP-SUM INSURANCE PROCEEDS FROM DETERMINATIONS OF ANNUAL INCOME FOR PENSION PURPOSES

Section 3 of the draft bill would amend 38 U.S.C. §5110(d) to make an award of death pension effective the first day of the month in which the death occurred if the claim is received within one year from the date of death. Section 4 of the draft bill would amend 38 U.S.C. §1503(a) to add lump-sum proceeds of life insurance policies to the list of payments that do not count as income for purposes of determining eligibility for death pension benefits administered by the Department of Veterans Affairs (VA) under chapter 15 of title 38, United States Code.

Under 38 U.S.C. §5110(a), an award based on a death pension claim received more than 45 days after the veterans death can be effective no earlier than the date of the claim. Pursuant to current 38 U.S.C. §5110(d)(2), however, if VA receives an application for death pension within 45 days of the veteran's death, then the effective date of a death pension award is the first day of the month in which the death occurred. Section 5110(d)(2)'s original one-year period was reduced to the current 45 days by the Deficit Reduction Act of 1984, Pub. L. No. 98–369, 98 Stat. 494, 854–901, as a cost-saving measure. Unfortunately, the ''45-day rule'' created a situation that has led to unfair and unequal treatment of applications for VA death pension.

The practical effect of the ''45-day rule'' in many cases has been to exclude lump-sum life insurance proceeds received within 45 days of the veteran's death from the countable income for pension claimants who file their claims more than 45 days after the date of the veteran's death. In contrast, claimants who both receive insurance proceeds and file pension claims within 45 days of the veteran's death have insurance proceeds counted as annual income, often reducing or precluding pension benefits during their first year of potential eligibility. In other words, claimants who receive insurance proceeds within 45 days of death, but who wait 45 days or longer to file pension claims, can receive pension effective from the date of claim without regard to recently-received insurance proceeds. In essence, claimants receiving lump-sum insurance proceeds under the current law are encouraged to forego entitlement from the date of death in exchange for the exclusion of the insurance payment in determining countable income for the following 12 months.

While many veterans' advocates are aware of this situation and advise claimants who receive life insurance proceeds within 45 days of death to postpone filing their claims, the current law unfairly penalizes claimants who are not well versed in such technical details. Fairness dictates that VA rules and

procedures be straightforward, particularly for claimants who are coping with the losses of loved ones. Consequently, we believe the ''45-day rule'' should be eliminated in favor of a rule making death pension benefits effective from the first day of the month of the veterans death if the claim is received within one year of that date.

However, we believe that this change must go hand in hand with an amendment, provided in section 4 of the draft bill, excluding lump-sum life insurance proceeds from the computation of income for death pension purposes. Lump-sum life insurance proceeds of genuine consequence are more appropriately address in terms of net worth, as provided in 38 U.S.C. §1543, than in terms of income. Pursuant of section 1543, a claimant is ineligible to receive death pension benefits if his or her net worth is such that it is reasonable that some portion of it should be consumed for his or her maintenance. In our view, a surviving spouse whose income, excluding lump-sum life insurance proceeds, and net worth do not constitute a bar to pension deserves help from VA.

We believe these proposed amendments are necessary and appropriate to eliminate unequal treatment of death pension applicants and to uphold one of the fundamental principles of the pension program, which is to ensure that those with the greatest need receive the greatest benefit.

We estimate that the net effect of enactment of both section 3 and section 4 would cost $649 thousand for FY 2004 and $12.8 million for the ten-year period FY 2004 through FY 2013.

CLARIFICATION OF PROHIBITION ON PAYMENT OF COMPENSATION FOR ALCOHOL OR DRUG-RELATED DISABILITY

Section 5(a) of the draft bill would amend 38 U.S.C. §§1110 and 1131 to clarify that the prohibition on payment of compensation for a disability that is a result of the veteran's own abuse of alcohol or drugs applies even if the abuse is secondary to a service-connected disability. Section 5(b) would make that amendment applicable to claims filed on or after the date of enactment and to claims filed before then but not finally decided as of that date.

Section 1110 and 1131 of title 38, United States Code, authorize the payment of compensation for disability resulting from injury or disease incurred or aggravated in line of duty in active service, during a period of war or during other than a period of war, respectively. Sections 1110 also currently provide, ''but on compensation shall be paid if the disability is a result of the veterans own willful misconduct or abuse of alcohol or drugs.'' Before their amendment in 1990, the provisions currently codified in sections 1110 and 1131 prohibited compensation ''if the disability is the result of the veteran's own willful misconduct.'' In 1990, they were amended to also prohibit compensation if the disability is a result of the veteran's own alcohol or drug abuse.

VA has long interpreted those provisions to authorize compensation not only for disability immediately resulting from injury or disease incurred or aggravated in service, but also for disability more remotely resulting from such injury or disease. That interpretation is embodied in 38 C.F.R. §3.310(a), which provides that, generally, disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. Thus, VA pays compensation for primary service-connected disability and for secondary service-connected disability. However, consistent with the plain meaning of sections 1110 and 1131, if a disability, whether primary or secondary, is a result of the veteran's own alcohol or drug abuse, VA did not pay compensation.

This has changed. On February 2, 2001, a three-judge panel of the United States Court of Appeals for the Federal Circuit interpreted section 1110 as not precluding compensation for an alcohol or drug-abuse-related disability arising secondarily from a service-connected disability. Allen v. Prncipi, 237 F.3d 1368, 1370 (Fed. Cir. 2001). More specifically, the panel held that section 1110 ''does not preclude compensation for an alcohol or drug abuse disability secondary to a service-connected disability or use of an alcohol or drug abuse disability as evidence of the increased severity of a service-connected disability.'' Id. at 1381. The Government filed a petition for rehearing and rehearing en banc, which the panel and full court denied on October 16, 2001. Allen v. Pincipi, 268 F.3d 1340, 1341 (Fed. Cir. 2001). However, five of the eleven judges who considered the petition for rehearing en banc dissented from the order denying rehearing, opening that that court's interpretation is wrong. 268 F.3d at 1341–42.

We are concerned that payment of additional compensation based on the abuse of alcohol or drugs is contrary to congressional intent and is not in veterans' best interests because it removes an incentive to refrain from debilitating and self-destructive behavior.

The Federal Circuit's interpretation in Allen could also greatly increase the amount of compensation VA pays for service-connected disabilities. Under the court's interpretation, any veteran with a service-connected disability who abuses alcohol or drugs is potentially eligible for an increased amount of compensation if he or she can offer evidence that the substance abuse is a way of coping with the pain or loss the disability causes. Under this interpretation, alcohol or drug abuse disabilities that are secondary to either physical or mental disorders are compensable.

The potential for increased costs is illustrated by mental disorders, which are frequently associated with alcohol and drug abuse. Almost 421,000 veterans are currently receiving compensation for a service-connected mental disability. All but 97,000 of those disabilities are currently rated less than 100 percent disabling and could potentially be rated totally disabling on the basis of secondary alcohol or drug abuse. Even if the service connection of disability from alcohol or drug abuse does not result in an increased schedular evaluation, temporary total evaluations could be assigned whenever a veteran is hospitalized for more than twenty-one days for treatment or observation related to the abuse. Even the 97,000 cases of a service-connected mental disability evaluated at 100 percent disabling have potential for increased compensation for secondary alcohol or drug abuse if the statutory criteria for special monthly compensation are met.

The potential increase in compensation does not end there. Under the Federal Circuit's interpretation, VA is required to pay compensation for the secondary effects of the abuse of alcohol or drugs. Once alcohol or drug abuse is service connected as being secondary to another service-connected disability, then service connection can be established for any disability that is a result of the service-connected abuse of alcohol or drugs. If alcohol or drug abuse results in a disease, such as cirrhosis of the liver, then that disease would also be service connected and provide a basis for compensation under the court's interpretation.

Of course, an increase in the amount of compensation VA pays for service-connected disabilities will increase the benefit cost of the compensation program. Section 5 of this draft would avoid those increased costs. Our estimate of savings that would result from enactment of the draft bill is based on the payment of only basic compensation for alcohol or drug abuse disabilities secondary to service-connected disabilities (*i.e.,* it does not consider temporary total evaluations, special monthly compensation, or compensation for the secondary effects of alcohol or drug abuse). We estimate that this provision would result in benefit cost savings of $127 million and administrative cost savings of $44 million in FY 2004 and benefit cost savings of $4.6 billion and administrative cost savings of $97 million for the ten-month period FY 2004 through FY 2013.

ALTERNATIVE BENEFICIARIES FOR NATIONAL SERVICE LIFE INSURANCE AND UNITED STATES GOVERNMENT LIFE INSURANCE

Section 6 would authorize the payment of unclaimed National Service Life Insurance (NSLI) and United States Government Life Insurance (USGLI) proceeds to an alternative beneficiary.

Under current law, there is no time limit under which a named beneficiary of an NSLI or USGLI policy is required to claim the proceeds. Consequently, when the insured dies and the beneficiary does not file a claim for the proceeds, VA is required to hold the unclaimed funds indefinitely in order to honor any possible future claims by the beneficiary. VA holds the proceeds as a liability. While extensive efforts are made to locate and pay these individuals, there are cases where the beneficiary simply cannot be found. Under current law, we are not permitted to pay the proceeds to a contingent or alternative beneficiary unless we can determine that the principal beneficiary predeceased the insured. Consequently, payment of the proceeds to other beneficiaries is withheld.

A majority of the existing liabilities of unclaimed proceeds were established over ten years ago. As time passes, the likelihood of locating and paying a principal beneficiary becomes more remote. In fact, the older a liability becomes, the more unlikely it is that it will ever be paid even though other legitimate heirs of the insured have been located.

Section 6 would authorize the Secretary to pay NSLI and USGLI proceeds to an alternative beneficiary when the proceeds have not been claimed by the named beneficiary within two years following the death of the insured or within two years of this bill's enactment, whichever is later. The principal beneficiary would have two years following the insured's death to file a claim. Afterward, a contingent beneficiary would have two additional years within which to file a claim. Payment would be made as if the principal beneficiary had predeceased the insured. If there is no contingent beneficiary to receive the proceeds, payment would be made to those equitably entitled, as determined by the Secretary. As occurs under current law, no payment would be made if payment would escheat to a State. Such payment would bar recovery of the proceeds by any other individual.

Section 6 of the bill would apply retroactively as well as prospectively, and is similar to the time-limitation provisions of the Servicemember's and Veterans' Group Life Insurance programs and the Federal Employees Group Life Insurance program.

Insofar as payment to beneficiaries is made from the insurance trust funds, there are no direct appropriated benefit costs associated with this section of the bill. The liabilities are already set aside and would eventually be paid, either as payment to beneficiaries that eventually claim the proceeds, or released from liability reserves and paid as dividends.

There are approximately 4,000 existing policies in which payment has not been made due to the fact that we cannot locate the primary beneficiary, despite extensive efforts.

Over the years, the sum of moneys had as aggregated to approximately $23 million. Each year, about 200 additional policies (with an average face value of $9600, or approximately $1.9 million annually) are placed into this liability because the law prohibits payment to a contingent beneficiary or to the veteran's heirs. It is estimated that approximately two-thirds of the 4,000 policies would eventually be paid as a result of this legislation. Additionally, in anticipation of the fact that VA will not be able to pay about one-third of these policies, nearly $7 million has already been released to surplus and made available for dividend distribution.

VA estimates that the enactment of this section would result in costs of $15 million during the five-year period FY 2004 through FY 2008 and a total of $17 million during the ten-year period FY 2004 through FY 2013.

TIME LIMITATION ON RECEIPT OF CLAIM INFORMATION PURSUANT TO REQUEST BY DEPARTMENT OF VETERANS AFFAIRS

Section 7(a) and (b) of the draft bill would make a technical correction to the statutory provisions created by the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106–475, 114 Stat. 2096. Section 7(c) would make that correction effective as if enacted immediately after the VCAA.

Before the enactment of the VCAA, 38 U.S.C. §5103(a) required VA, if a claimant's application for benefits was incomplete, to notify the claimant of the evidence necessary to complete the application. Section 5103(a) further provided: ''If such evidence is not received within one year from the date of such notification, no benefits may be paid or furnished by reason of such application.''

In accordance with former section 5103(a), VA regulations provide that, if evidence requested in connection with a claim is not furnished within one year after the date of request, the claim will be considered abandoned. After the expiration of one year, VA will take no further action unless it receives a new claim. Furthermore, should the right to benefits be finally established, benefits based on such evidence would commence no earlier than the date the new claim was filed. 38 C.F.R. §3.158(a).

Before the enactment of the VCAA, title 38, United States Code, contained no provision requiring VA to notify a claimant of the evidence necessary to substantiate a claim.

Section 3(a) of the VCAA struck former 38 U.S.C. §§5102 and 5103 and added new sections 5102 and 5103. 114 Stat. at 2096–97. Now section 5102(b) requires VA, if a claimant's application for a benefit is incomplete, to notify the claimant (and his or her representative, if any) of the information necessary to complete the application. Section 5102 contains no provision concerning a time limitation for the submission of information necessary to complete an application.

Now section 5103(a) requires VA, upon receipt of a complete or substantially complete application for benefits, to notify the claimant (and his or her representative, if any) of any information and evidence not previously provided to VA that is necessary to substantiate the claim. Furthermore, that notice must indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, VA will attempt to obtain on the claimant's behalf. Section 5103(b)(1) provides, in the case of information or evidence that the claimant is notified is to be provided by him or her, if VA does not receive such information or evidence within one year from the date of such notification, no benefit may be paid or furnished by reason of the claimant's application.

As a result of the amendments made by the VCAA, the statutory provision imposing a one-year limitation now relates to the substantiation of claims rather than to the completion of applications. We do not believe Congress intended this change from prior law. This change raises several potential problems.

Without a statutory limitation of one year to complete an application, VA no longer has a statutory basis for closing an application as abandoned. Thus, if a claimant were to submit an incomplete application for benefits, but not respond to VA's notice of the information necessary to complete it until many years later, the award of any benefit granted on the basis of that application would have to be effective from the date of the application, even though the claimant took no action to complete it for many years. Further, it appears that VA would be authorized to close or deny the claim based on the claimant's failure to respond. We do not believe Congress intended this result. Rather, we believe that the former one-year statutory limitation on the time available to complete an application should be restored.

The statutory limitation of one year to substantiate a claim also raises potential problems. One such problem is the possibility that courts will interpret the provision to preclude VA from deciding a claim until one year has expired from the date VA gives notice of the information and evidence necessary to substantiate the claim. Exactly that interpretation was offered by several veterans service organizations challenging VA's regulations implementing the VCAA. Under those regulations, as part of VA's notice under section 5103(a), VA will request the claimant to provide any evidence in the claimant's possession that pertains to the claim. We ask for the evidence within 30 days, but tell the claimant that one year is available to respond. If the claimant has not responded to the request within 30 days, VA may decide the claim before expiration of the one year, based on all the information and evidence contained in the file, including information and evidence it has obtained on the claimant's behalf. However, VA will have to readjudicate the claim if the claimant subsequently provides the information and evidence within one year of the date of the request. 38 C.F.R. §3.159(b)(1).

VA issued those rules ''to allow for the timely processing of claims.'' 66 Fed. Reg. 17,834, 17,835 (2001). Once an application had been substantially completed, VA does not want to have to wait one year to decide the claim, given the large backlog of claims awaiting adjudication by VA and the Secretary's commitment to reducing the backlog and shortening the time VA takes to adjudicate claims. What VA considers to be Congress' inadvertent moving of the one-year limitation from the provision relating to completion of applications to the provision relating to the substantiation of claims could impede VA's efforts to improve service to veterans. VA doubts that Congress intended to require VA, after requesting evidence from a claimant, to keep the claim open and pending for a full year if the claimant has not responded.

Furthermore, section 5103(b)(1)'s clear and unambiguous language appears to prohibit the payment of benefits even though VA could allow a claim. For example, VA might be able to allow a claim on the basis of evidence VA obtained on the claimant's behalf, even though the claimant has not provided the evidence requested of him or her. Or VA might find clear and unmistakable error in a prior denial and need to grant benefits on the claim that was erroneously denied. Yet section 5103(b)(1) prohibits the payment or furnishing of any benefit if VA does not receive within one year the information or evidence the claimant is to provide according to VA's notice. Surely, Congress did not intend such a results.

Finally, some of VA's pro-veteran regulations will have to be changed unless the one-year time limitation is removed from section 5103. For example, 38 C.F.R. §20.1304(a) permits an appellant to submit additional evidence during the 90 days following notice that an appeal has been certified to the Board of Veterans' Appeals and the appellate record has been transferred to the Board. That 90-day period may extend beyond the one-year period following notice of the information and evidence necessary to substantiate the claims given under section 5103(a), in which case it would conflict with the statutory mandate that ''no benefit may be paid or furnished by reason of the claimant's application'' if VA does not receive the evidence within one year from the date of the section 5103(a) notice. Another potentially conflicting regulation is 38 C.F.R. §3.156(b), which deems new and material evidence received before expiration of the one-year appeal period (beginning when notice of the decision on a claim is sent) or before an appellate decision is made if a timely appeal is filed to have been filed in connection with the claim pending at the beginning of the appeal period. Because the one-year appeal period necessarily extends beyond the one-year substantiation period, the regulation authorizes the grant of benefits based on evidence not timely received under section 5103(b), contrary to the statutory mandate.

Accordingly, we propose a technical amendment to sections 5102 and 5103 that would prevent these problems. Section 7 would restore the one-year limitation to section 5102 and remove it from section 5103. It would make these technical amendments effective as if enacted immediately after the VCAA.

No costs are associated with this proposal. These amendments would allow VA to close inactive or abandoned claims and would prevent unjustified retroactive awards.

BURIAL PLOT ALLOWANCE

Section 8 of the draft bill would amend 38 U.S.C. §§2303(b) and 2307 to authorize payment of the burial plot allowance to states for each veteran interred in a state veterans cemetery at not cost to the veteran's estate or survivors.

Current section 2302(b)(1) authorizes VA to pay to a state a $300 plot or interment allowance for each eligible veteran buried in qualifying state veterans' cemetery. Such allowance authorized only if the veteran: (1) was a veteran of any war; (2) was discharged from active service for a service-connected disability; (3) was receiving VA compensation or pension at the time of death; or (4) died in a VA facility. Under current section 2307, survivors of veterans who die as a result of service-connected disabilities may seek reimbursement of burial and funeral expenses not exceeding $2,000. If, however, a burial and funeral allowance is paid to a veteran's survivors under section 2307, states cannot also receive a plot allowance for burial of the veteran. The proposed amendment would expand VA's authority to pay the plot allowance to states for burial in State veterans' cemeteries of all eligible peacetime veterans and all wartime veterans who die of service-connected disabilities.

This amendment would encourage state participation in the State Cemetery Grants Program. In 1978, Congress established the State Cemetery Grants Program to complement VA's national cemetery system by assisting states in providing burial plots for veterans in areas where existing national cemeteries cannot satisfy veterans' burial needs. State officials have indicated to VA that they consider future maintenance costs

when deciding whether to pursue a state cemetery grant. To the extent that the amendment would help defray those maintenance costs and encourage states to establish veterans' cemeteries, it would make the benefit of burial in such a cemetery an accessible option for more veterans.

The proposed amendment would allow states to receive plot allowance payments for approximately 1,200 additional interments annually. We estimate the costs associated with the enactment of this amendment would be $360,000 for FY 2004 and $3.6 million for the ten-year period from FY 2004 through FY 2013.

PROVISION OF MARKERS FOR PRIVATELY MARKED GRAVES

Section 9 would change the applicability date of VA's current authority to provide a marker for the private-cemetery grave of a veteran, regardless of whether the grave has been marked at private expense. Section 2306(a) of title 38, United States Code, has long authorized VA to provide a Government headstone or marker for the unmarked grave of an eligible individual. Section 502 of the Veterans Education and Benefits Expansion Act of 3001, Pub. L. No. 107–103, §502, 115 Stat. 976, 994, which was signed into law on December 27, 2001, authorized VA to furnish appropriate marker for the grave of an eligible veteran buried in a private cemetery, regardless of whether the grave was already marked with a non-Government marker. This authorization was made applicable to veterans who died on or after that Act's enactment date. Public Law 107–440 extended this authority to include deaths.

Under current law, if a veteran died before September 11, 2001, provision of a Government headstone or market is authorized only if the veterans' grave is unmarked. If a veteran died after September 11, 2001, provision of a Government headstone or market is authorized regardless of whether the grave is already marked at private expense. While recent changes in the law have allowed VA to begin to meet the needs of families who view the government-furnished market as a means of honoring and publicly recognizing a veteran's military service, VA is now in the difficult position of having to deny a benefit based solely on when a veteran died.

Moreover, the law has never precluded the addition of a privately purchased headstone to a grave after place of a government-furnished marker, resulting in double marking. However, when a private marker had been placed in the first instance, a Government marker may not be provided if the veteran died before September 11, 2001. We believe this creates an arbitrary distinction disadvantaging families who promptly obtained a private marker.

From October 18, 1979, until November 1, 1990, with the enactment of the Omnibus Budget and Reconciliation Act of 1990, VA paid a headstone or marker allowance to those families who purchased a private headstone or marker in lieu of a Government headstone or marker. Those families all had the opportunity to benefit from the VA-marker program. Our proposal would benefit families of those veterans who died between November 1, 1990, and September 11, 2001.

We estimate that the mandatory cost of this proposal would be $4.9 million if FY 2004 and $12.4 million during the period FY 2004 through FY 2013.

EXPANSION OF BURIAL ELIGIBILITY FOR REMARRIED SPOUSES

Section 10 would allow a veteran's surviving spouse who marries a non-veteran after the veteran's death to be eligible for burial in a VA national cemetery based on his or her marriage to the veteran. Over the last several years, the National Cemetery Administration has seen an increase in the number of requests for burial of a veteran's widow or widower who has married a non-veteran after the veteran has died. These cases involve spouses of veterans who have been married for many years and have raised a family with the veteran. Typically, the veteran's children and grandchildren, and of the current spouse, support the burial of the decedent with the original veteran-spouse in a VA national cemetery. However, current law does not permit it if the remarriage remained in effect when the veteran's survivor predeceased the new spouse.

Public Law 103–446 revised eligibility criteria for burial in a national cemetery to reinstate burial eligibility for a surviving spouse of an eligible veteran whose subsequent remarriage to a non-veteran has been terminated by death or dissolved by divorce. The current proposal would be consistent with that amendment in further acknowledging the importance of the first marriage to the veteran's family. This proposal would allow the deceased veteran to be buried with a spouse with whom he or she always expected to be buried with a spouse with whom he or she always expected to be buried. It would also allow the veteran's children to visit a single gravesite to pay their respects to their parents.

We estimate that the cost associated with this proposal would be minimal. The average number of requests for burials for individuals previously married to an eligible veteran who subsequently married a non-veteran is estimated to be 200 per year; the majority of these burials would be second interments. The cost of a second interment (including a headstone or marker) in a VA national cemetery ranges from just over $400 to nearly $800, depending on the type of burial and placement of the remains, with an average cost of approximately $550. For FY 2004, we anticipate the cost of the proposal would be $110,000. Our ten-year cost estimate (FY 2004 through FY 2013) is $1.1 million.

MAKE PERMANENT AUTHORITY FOR STATE CEMETERY GRANTS PROGRAM

Section 2408 of title 38, United States Code, authorizes VA to make grants to states to assist them in establishing, expanding, or improving state veterans' cemeteries. Section 2408(a)(2) currently authorizes appropriations for making those grants through fiscal year 2004. Section 11 of our proposed bill would permanently authorize such appropriations.

VA's State Cemetery Grants Program is an important component in meeting the burial needs of our Nation's veterans. State veterans' cemeteries supplement VA's national cemetery system in providing burial options to veterans throughout the Nation. VA's State Cemetery Grants Program has already helped to fund 49 operational state veterans' cemeteries, and six more are under construction. VA has received over 30 additional pre-applications from states requesting grants. There is a tremendous, on-going demand for grants to improve or expand existing state veterans' cemeteries, and VA's proposal would assist long-term planning for this important program.

Appropriations for VA's State Home Grants Program (authorized by subchapter III of chapter 81, title 38, United States Code) are permanently authorized under 38 U.S.C. §7133(a). The amendment made by section 11 of this bill would improve the consistency in the operation of the two programs.

The costs associated with this proposal would be those included in VA's annual budget request for use in providing grants to states. The President's budget submission to Congress for FY 2004 includes a request for $32 million for the State Cemetery Grants Program.

FORFEITURE OF BENEFITS FOR SUBVERSIVE ACTIVITIES

Section 12 would amend 38 U.S.C. §6105 to supplement the list of offenses conviction of which would result in a bar to all gratuitous VA benefits. Section 6105 provides that an individual convicted after September 1, 1959, of any of several specified offenses involving subversive activities shall have no right to gratuitous benefits, including national cemetery burial, under laws administered by the Secretary of Veterans Affairs and that no other person shall be entitled to such benefits on account of such individual. Congress' primary concern in enacting this provision was to prevent VA benefits from being provided based on military service of persons found guilty of offenses involving national security. This proposal would amend section 6105 to supplement the list of offenses conviction of which would result in a bar to all gratuitous VA benefits to include additional offenses that have come into being since enactment of section 6105.

This proposal would extend the current prohibition on payments of gratuitous benefits to persons convicted of subversive activities to include six additional classes of activities. The following offenses from title 18, United States Code, would be added: sections 175 (Prohibitions with respect to biological weapons); 229 (Prohibited activities with respect to chemical weapons); 831 (Prohibited transactions involving nuclear materials); 1091 (Genocide); 2332a (Use of certain weapons of mass destruction); and 2332b (Acts of terrorism transcending national boundaries). All of these offenses, which involve serious threats to national security, were added to title 18, United States Code, after the enactment of section 6105.

There is no cost associated with this proposal. Cost savings would be insignificant.

VETERANS' ADVISORY COMMITTEE ON EDUCATION

Section 13 would extend to the year 2013 the expiration date of the Veterans' Advisory Committee on Education. It would also amend the language requiring that veterans from specific wartime and post-wartime periods be members of the Committee to state that Committee positions must be filled with such individuals as far as practicable. Finally, this section would make a technical amendment to reflect that, under title 10, United States Code, as reorganized, chapter 106 is now designated chapter 1606.

Under current law, the authority for the Committee will expire on December 31, 2003. VA favors extending the existence of the Education Advisory Committee. The Committee has been useful for the Secretary in keeping in touch with the education community, as well as the veterans' service organizations. Over the last several years, the Committee has made a number of recommendations that have, in turn, become legislative proposals. We believe the Committee's discussions and recommendations are an invaluable aid to our efforts in administering the education program.

The amendment that would require that veterans from certain periods, e.g. World War II, the Korean conflict era, or post-Korean conflict era, be included as members of the Committee only as far as practicable allows for flexibility in filling Committee positions if finding members of specific populations who wish to serve on the Committee might be problematic.

We estimate the costs associated with the extension of the Committee would be $25,400 for FY 2004 and $200,000 for the ten-year period from FY 2004 through FY 2013.

REPEAL OF EDUCATION LOAN PROGRAM

Section 14 would repeal the VA education loan program and waive any existing repayment obligations, to include overpayments

due to default on such loans. The program, in effect since January 1, 1975, currently is available to issue loans up to a maximum of $2,500 per academic year to spouses and surviving spouses who are past their delimiting dates with remaining entitlement to chapter 35 benefits. The population for this program is very limited, and with other options in the public and private sectors, there is no longer a demand for these loans. In fact, VA has not issued a loan under this program in several years, but the government has paid an estimated $70,000 a year to administer it. VA's October 2002 monthly loans statistics show 20 current education loans in the amount of $14,987.08 and 116 defaulted education loans totaling $105,908.10. As is apparent, it costs VA more to administer the loan program than to forgive the debts currently outstanding.

RESTORATION OF CHAPTER 35 EDUCATION BENEFITS OF CERTAIN INDIVIDUALS

Section 15 would amend the law to provide that individuals who qualify for chapter 35 benefits and are involuntarily ordered to full-time National Guard duty under 32 U.S.C. §502(f) after September 11, 2001, would have their individual delimiting dates (the ending date of the individual's eligibility) extended by an amount of time equal to that period of full-time duty plus 4 months.

Public Law 107–103 restored entitlement to National Guard personnel who qualified for chapter 35 benefits who had to discontinue course pursuit as a result of being called to active duty under specific sections of title 10, United States Code. Our proposal would provide the same delimiting date extension to National Guard members who are activated under title 32.

We estimate the costs associated with the enactment of section 15 would be $150,000 for FY 2004 and approximately $5 million for the ten-year period from FY 2004 through FY 2013.

EXPANSION OF MONTGOMERY GI BILL EDUCATION BENEFITS FOR CERTAIN SELF-EMPLOYMENT TRAINING

Section 16 would expand the Montgomery GI Bill chapter 30 program by authorizing education assistance benefits for veterans under that program for on-job training in certain self-employment training programs. Such training might, for example, include that necessary for operation of a franchise or to gain a commercial drivers' license to become an independent trucker.

The Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50) requires that all Federal agencies aggressively support self-employment for veterans and service-disabled veterans, directly and through public-private partnerships. This amendment will provide veterans considering self-employment with improved access to capital for training. Thus, more veterans will be encouraged to initiate steps towards self-employment and sustainable self-sufficiency.

We estimate the costs associated with the enactment of section 16 would be $357,000 for FY 2004 and approximately $3.9 million for the ten-year period from FY 2004 through FY 2013.

The Budget Enforcement Act's pay-as-you-go (PAYGO) requirements and discretionary spending caps expired on September 30, 2002. The attached proposals affect revenues and direct spending. This bill is currently estimated to produce cost savings of $116.1 million for FY 2004 and $4.52 billion for FY 2004 through FY 2013. These proposals were included in the President's FY 2004 Budget and should be considered in conjunction with all other proposals in the Budget. The Administration supports the extension of budget enforcement mechanisms in a manner that ensures fiscal discipline and is consistent with the President's Budget.

The Office of Management and Budget advises that there is no objection to the transmission of this bill and that its enactment would be in accord with the Administration's program.

Sincerely yours,

ANTHONY J. PRINCIPI

Enclosure.

SECTION-BY-SECTION ANALYSIS OF DRAFT BILL—VETERANS PROGRAMS IMPROVEMENT ACT OF 2003

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE

Section 1(a) would provide a short title for the Act: the ''Veterans Programs Improvement Act of 2003.'' Section 1(b) would provide that all amendments made by the Act, unless otherwise specified, are to a section or other provision of title 38, United States Code.

SECTION 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

Section 2 would direct the Secretary of Veterans Affairs to administratively increase the rates of disability compensation for veterans with service-connected disabilities and of dependency and indemnity compensation (DIC) for the survivors of veterans whose deaths are service related, effective December 1, 2003. As provided in the President's fiscal year 2004 budget request, the rate of increase would be the same as the cost of living adjustment that will be provided under current law to Social Security recipients, which is currently estimated to be 2 percent.

SECTION 3. REPEAL OF 45-DAY RULE FOR EFFECTIVE DATE OF AWARD OF DEATH PENSION

Section 3 would amend 38 U.s.C. §5110(d) to make an award of death pension effective the first day of the month in which the death occurred if the claim is received within one year from the date of death.

SECTION 4. EXCLUSION OF LUMP-SUM LIFE INSURANCE PROCEEDS FROM DETERMINATIONS OF ANNUAL INCOME FOR PENSION PURPOSES

Section 4 would amend 38 U.S.C. §1503(a) to add lump-sum proceeds of life insurance policies to the list of payments that do not count as income for purposes of determining eligibility for death pension benefits administered by the Department of Veterans Affairs (VA) under chapter 15 of title 38, United States Code.

SECTION 5. CLARIFICATION OF PROHIBITION ON PAYMENT OF COMPENSATION FOR ALCOHOL OR DRUG-RELATED DISABILITY

Section 5(a) would amend 38 U.S.C. §§1110 and 1131 to clarify that the prohibition on payment of compensation for a disability that is a result of the veteran's own abuse of alcohol or drugs applies even if the abuse is secondary to a service-connected disability. Section 5(b) would make that amendment applicable to claims filed on or after the date of enactment and to claims filed before then but not finally decided as of that date.

SECTION 6. ALTERNATIVE BENEFICIARIES FOR NATIONAL SERVICE LIFE INSURANCE AND UNITED STATES GOVERNMENT LIFE INSURANCE

Section 6 would authorize the payment of unclaimed National Service Life Insurance and United States Government Life Insurance proceeds to an alternative beneficiary.

SECTION 7. TIME LIMITATION ON RECEIPT OF CLAIM INFORMATION PURSUANT TO REQUEST BY DEPARTMENT OF VETERANS AFFAIRS

Section 7(a) and (b) would make a technical correction to the statutory provisions created by the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106–475, 114 Stat. 2096. It would change the applicability of a one-year time limit from the substantiation of a claim to the completion of an application. Section 7(c) would make that correction effective as if enacted immediately after the VCAA.

SECTION 8. BURIAL PLOT ALLOWANCE

Section 8 would amend 38 U.S.C. §§2302(b) and 2307 to authorize payment of the burial plot allowance to states for each veteran interred in a state veterans' cemetery at no cost to the veteran's estate or survivors.

SECTION 9. PROVISION OF MARKERS FOR PRIVATELY MARKED GRAVES

Section 9 would change the applicability date (to deaths occurring on or after November 1, 1990) of VA's current authority to provide a marker for the private-cemetery grave of a veteran, regardless of whether the grave has been marked at private expense.

SECTION 10. EXPANSION OF BURIAL ELIGIBILITY FOR REMARRIED SPOUSES

Section 10 would allow a veteran's surviving spouse who marries a non-veteran after the veteran's death to be eligible for burial in a VA national cemetery based on his or her marriage to the veteran.

SECTION 11. MAKE PERMANENT AUTHORITY FOR STATE CEMETERY GRANTS PROGRAM

Section 11 would permanently authorize appropriations for the State Cemetery Grants Program under 38 U.S.C. §2408, which authorizes VA to make grants to states to assist them in establishing, expanding, or improving state veterans' cemeteries.

SECTION 12. FORFEITURE OF BENEFITS FOR SUBVERSIVE ACTIVITIES

Section 12 would amend 38 U.S.C. §6105 to supplement the list of offenses conviction of which bars entitlement to all gratuitous VA benefits.

SECTION 13. VETERANS' ADVISORY COMMITTEE ON EDUCATION

Section 13 would extend to the year 2013 the expiration date of the Veterans' Advisory Committee on Education. It would also amend the language requiring that veterans from specific wartime and post-wartime periods be members of the Committee to state that Committee positions must be filled with such individuals when practicable. Finally, this section would make a technical amendment to reflect that, under title 10, United States Code, as reorganized, chapter 106 is now designated chapter 1606.

SECTION 14. REPEAL OF EDUCATIONAL LOAN PROGRAM

Section 14 would repeal the VA education loan program and waive any existing repayment obligations, to include overpayments due to default on such loans.

SECTION 15. RESTORATION OF CHAPTER 35 EDUCATION BENEFITS OF CERTAIN INDIVIDUALS

Section 15 would provide that individuals who qualify for chapter 35 benefits and are involuntarily ordered to full-time National Guard duty under 32 U.S.C. §502(f) after September 11, 2001, would have their individual delimiting dates (the ending date of the individual's eligibility) extended by an amount of time equal to that period of full-time duty plus 4 months.

SECTION 16. EXPANSION OF MONTGOMERY GI BILL EDUCATION BENEFITS FOR CERTAIN SELF-EMPLOYMENT TRAINING

Section 16 would expand the Montgomery GI Bill chapter 30 program by authorizing education assistance benefits for veterans under that program for on-job training in certain self-employment training programs.

By Mr. BOND (for himself and Mr. INHOFE) (by request):

S. 1134. A bill to reauthorize and improve the programs authorized by the Public Works and Economic Development Act of 1965; to the Committee on Environment and Public Works.

Mr. BOND. Mr. President, in these times of economic distress and hardship we must focus our efforts to assist the more impoverished regions of our country. With this in mind, it is my pleasure to rise today to introduce, on behalf of President Bush, the Economic Development Administration Reauthorization Act of 2003.

This bill will allow the Economic Development Administration, commonly known as the EDA, to assist communities in the development of their local economy. Simply put, it will help to bring jobs to our cities and towns by reauthorizing the mission of the EDA, while focusing the Administration's efforts on localized economic growth.

EDA was established under the Public Works and Economic Development Act of 1965. Throughout the near forty years of its existence, EDA has helped to generate employment, retain existing jobs, and stimulate industrial and commercial growth in rural and urban areas of the nation that experience high unemployment, low income or other severe economic distress.

EDA has consistently been guided by the basic principle that 'distressed communities must be empowered to develop and implement their own economic development and revitalization strategies'. To achieve these goals, EDA works in partnership with State and local governments by providing Federal grants to public and private nonprofit organizations, regional economic development agencies and Indian tribes.

This bill seeks to improve the coordination, flexibility, and performance of EDA. It focuses on methods to ensure that EDA can more easily work in coordination with other agencies involved in economic development, such as the Army Corps of Engineers or the Department of Labor. It attempts to improve EDA's ability to respond to rapidly changing economic conditions within regions and it highlights the need to focus on the performance of grantees—whether grantees actually increase jobs and economic growth.

During the last decade, in my home State of Missouri, EDA has implemented over 300 projects and invested more than $115 million into my state's economy. These projects have included improvements to the Cornerstone Industrial Park in St. Louis, the renovation of a blighted neighborhood outside Kansas City, and construction assistance for the Center for Emerging Technologies in St. Louis. EDA assistance in Missouri has truly been a boon to local investment and economic growth. Reauthorization of EDA will enable future projects like these throughout our country for years to come.

In this time of economic difficulty, strong partnership between federal and local governments are crucial. My hope is that through a sustained focus on spurring growth in our economy through continued support of the EDA, we can surmount the economic challenges of today and prepare the way for a more prosperous future.

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

S. 1134

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

SECTION 1. SHORT TITLE.

SHORT TITLE.—This Act may be cited as the ''Economic Development Administration Reauthorization Act of 2003''.

SEC. 2. FINDINGS AND DECLARATIONS.

Section 2 of the Public Works and Economic Development Act of 1965, as amended (''PWEDA'') (42 U.S.C. §3121), is revised to read as follows:

''SEC. 2. FINDINGS AND DECLARATIONS.

''(a) FINDINGS.—Congress finds that—

''(1) while the fundamentals for growth in the American economy remain strong, there continue to be areas experiencing chronic high unemployment, underemployment, low per capita incomes, and outmigration as well as areas facing sudden and severe economic dislocations due to structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

''(2) sustained economic growth in our Nation, States, cities and rural areas is produced by expanding free enterprise through trade and enhanced competitiveness of regions;

''(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging local and regional communities to develop a more competitive and diversified economic base by—

''(A) promoting job creation through increased innovation, productivity, and entrepreneurship; and

''(B) empowering local and regional communities experiencing chronic high unemployment and low per capita income to attract substantially increased private-sector capital investment;

''(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private local, regional, Tribal and State organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

''(5) in order to avoid wasteful duplication of effort and achieve meaningful, long-lasting results, Federal, State, Tribal and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, common measures of success, and simplified and consistent requirements; and

''(6) Federal economic development efforts will be more effective if they are coordinated with, and build upon, the trade, workforce investment, and technology programs of the United States.

''(b) DECLARATIONS.—Congress declares that, in order to promote a strong and growing economy throughout the United States:

''(1) assistance under this Act should be made available to both rural and urban distressed communities;

''(2) local communities should work in partnership with neighboring communities, Indian Tribes, the States, and the Federal Government to increase their capacity to develop and implement comprehensive economic development strategies to enhance regional competitiveness in the global economy and support long-term development of regional economies; and

''(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to focus on strengthening entrepreneurship and competitiveness, and to take advantage of the development opportunities afforded by technological innovation and expanding and newly opened global markets.''.

SEC. 3. DEFINITIONS.

Section 3 of PWEDA (42 U.S.C. §3122) is amended as follows:

(1) Subparagraph (4)(A) of this section is amended by striking subparagraph (i) and re-designating successive subpararphs (ii) through (vii) as (i) through (vi) and revising subparagraph (iv) as re-designated to read as follows:

''(iv) a city or other political subdivision of a State, including a special purpose unit of State or local government, or a consortium of political subdivisions;''.

(2) Subparagraph 4(B) is amended by adding at the end thereof a new sentence:

''The requirement under subparagraph (A)(vi) that the nonprofit organization or association is 'acting in cooperation with officials of a political subdivision of a State' does not apply in the case of research, training and technical assistance grants under section 207 that are national or regional in scope.''.

(3) Paragraph (8), (9) and (10) are amended by re-designating them as paragraphs (9), (10) and (11) and a new paragraph (8) is added as follows:

''(8) REGIONAL COMMISSIONS.—The term 'Regional Commissions' as used in section 403 of this Act refers to the regional economic development authorities: the Delta Regional Authority (Pub. L. No. 106–554, Sec. 1(a)(4) [Div. B, title VI]. 114 Stat. 2763A–268) (7 U.S.C. §2009aa et seq.), the Denali Commission (Pub. L. No. 105–277, Div. C, title III, 112 Stat. 2681–637)(42 U.S.C. §3121 note), and the Northern Great Plains Regional Authority (Pub. L. 107–171, 116 Stat. 375) (7 U.S.,C. §2009bb et seq.).''.

(4) A new paragraph (12) is added at the end to read as follows:

''(12) UNIVERSITY CENTER.—The term 'university center' refers to a University Center for Economic Development established pursuant to the authority of section 207(a)(2)(D) of this Act.''.

SEC. 4. WORKING WITH NONPROFIT ORGANIZATIONS IN ESTABLISHMENT OF ECONOMIC DEVELOPMENT PARTNERSHIPS.

Section 101 of PWEDA (42 U.S.C. §3131) is amended as follows:

(1) In subsection (b) strike ''and multi-State regional organizations'' and insert in lieu thereof ''multi-State regional organizations, and nonprofit organizations.''

(2) In subsection (d) strike ''adjoining'' each time it occurs.

SEC. 5. SUB-GRANTS IN CONNECTION WITH PUBIC WORKS PROJECTS.

Section 201 of PWEDA (42 U.S.C. §3141) is amended by adding a new subsection (d) as follows:

''(d) SUB-GRANTS.—(1) Subject to paragraph (2), a recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a subgrant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.

''(2) Under paragraph (1), a receipt may not redistribute grant funds to a for-profit entity.''.

SEC. 6 CLARIFICATION OF GRANTS FOR STATE PLANNING.

Section 203 of PWEDA (42 U.S.C. §3143) is amended as follows:

(1) Revise paragraph (1) of subsection (d) to read as follows:

''(1) DEVELOPMENT.—Any State plan developed with assistance under this section shall, to the maximum extent practicable, take into consideration regional economic development strategies.'';

(2) Strike paragraph (3) of subsection (d) in its entirety and re-designate paragraphs (4) and (5) and (3) and (4);

(3) Revise re-designated paragraph (3) of subsection (d) by striking ''and'' at the end of subparagraph (C) and re-designating current subparagraph (D) as (E) and adding a new subparagraph (D) to read as follows:

''(D) assist in carrying out state's workforce investment strategy (as outlined in the State plan required under section 112 of the Workforce Investment Act of 1998 (29 U.S.C. §2822)); and'';

(4) Add a new subsection (e) at the end thereof as follows:

''(e) SUB-GRANTS.—(1) Subject to paragraph (2), a recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a subgrant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.

''(2) Under paragraph (1), a recipient may not redistribute grant funds to a for-profit entity.''.

SEC. 7. SIMPLIFICATION OF DETERMINATION OF GRANT RATES.

Sections 204 and 205 of PWEDA (42 U.S.C. §§3144, 3145) are amended to read as follows:

''SEC. 204. COST SHARING.

''(a) FEDERAL SHARE.—The Secretary shall issue regulations to establish the applicable grant rates for projects based on the relative needs of the areas in which the projects are located. Except as provided in subsection (c) below, the amount of a grant for a project under this title may not exceed 80 percent of the cost of the project.

''(b) NON-FEDERAL SHARE.—In determining the amount of the non-Federal share of the cost of a project, the Secretary may provide credit toward the non-Federal share for all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, and services, and assumptions of debt.

''(c) INCREASE IN FEDERAL SHARE.—

''(1) INDIAN TRIBES.—In the case of a grant to an Indian tribe, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

''(2) CERTAIN STATES, POLITICAL SUBDIVISIONS, AND NONPROFIT ORGANIZATIONS.—In the case of a grant to a State (or a political subdivision of a State), that the Secretary determines has exhausted its effective taxing and borrowing capacity, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted its effective borrowing capacity, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

''SEC. 205. GRANTS SUPPLEMENTING OTHER AGENCY GRANTS. (42 U.S.C. §3145)

''(a) DEFINITION OF DESIGNATED FEDERAL GRANT PROGRAM.—In this section, the term 'designated Federal grant program' means any Federal grant program that—

''(1) provides assistance in the construction or equipping of public works, public service, or development facilities;

''(2) is designated as eligible for an allocation of funds under this section by the Secretary; and

''(3) assists projects that are—

''(A) eligible for assistance under this title; and

''(B) consistent with a comprehensive economic development strategy.

''(b) SUPPLEMENTARY GRANTS.—Subject to subsection (c) below, in order to assist eligible recipients to take advantage of designated Federal grant programs, on the application of an eligible recipient, the secretary may make a supplementary grant for a project for which the eligible recipient is eligible but, because of the recipient's economic situation, for which the eligible recipient cannot provide the required non-Federal share.

''(c) REQUIREMENTS APPLICABLE TO SUPPLEMENTARY GRANTS.—

''(1) AMOUNT OF SUPPLEMENTARY GRANTS.—The share of the project cost supported by a supplementary grant under this section may not exceed the applicable grant rate under section 204.

''(2) FORM OF SUPPLEMENTARY GRANTS.—The Secretray shall make supplementary grants by

''(A) the payment of funds made available under this Act to the heads of the Federal agencies responsible for carrying out the applicable Federal programs, or

''(B) the award of funds under this Act which will be combined with funds transferred from other Federal agencies in projects administered by the secretary.''.

''(3) FEDERAL SHARE LIMITATIONS SPECIFIED IN OTHER LAWS.—Notwithstanding any requirement as to the amount or source of non-Federal funds that may be applicable to a Federal program, funds provided under this section may be used to increase the Federal share for specific projects under the program that are carried out in areas described in section 301(a) above the Federal share of the cost of the project authorized by the law governing the program.''.

SEC. 8. REGULATIONS ON ALLOCATIONS TO ENSURE JOB CREATION POTENTIAL.

Subsection 206 of PWEDA (42 U.S.C. §3146) is amended by striking ''and'' at the end of subparagraph (1)(C), inserting ''and'' at the end of paragraph (2), and adding a new paragraph (3) at the end thereof to read as follows:

''(3) allocations of assistance under this title promote job creation through increased innovation, productivity, and entrepreneurship, and financial assistance extended pursuant to such allocations will have a high probability of meeting or exceeding applicable performance requirements established in connection with extension of the assistance.''.

SEC. 9. INCREASED FLEXIBILITY IN GRANTS FOR TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.

(a) Section 207 of PWEDA (42 U.S.C. §3147) is amended by striking ''and'' at the end of subparagraph (2)(F) of subsection (a), re-designating current subparagraph (G) as (H), and adding a new subparagraph (G) to read as follows:

''(G) studies that evaluate the effectiveness of collaborations between projects funded under this Act with projects funded under the Workforce Investment Act of 1998 (29 U.S.C. §2801 et seq.); and ''.

(b) Section 207 is further amended by adding a new subsection (c) to read as follows:

''(c) SUB-GRANTS.—A recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a sub-grant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.''.

SEC. 10. REMOVAL OF SECTION.

Section 208 of PWEDA (42 U.S.C. §3148) is stricken in its entirety and insert in lieu thereof:

''SEC. 208. [Repealed].''.

SEC. 11. IMPROVEMENTS IN ADMINISTRATION GRANTS FOR ECONOMIC ADJUSTMENT INVOLVING REVOLVING LOAN FUND PROJECTS.

(a) Subsection (d) of section 209 of PWEDA (42 U.S.C. §3149) is amended by striking ''an eligible'' in each case it occurs in paragraphs (1) and (2) inserting in lieu thereof ''a recipient''.

(b) Section 209 of PWEDA (42 U.S.C. §3149) is amended by adding a new subsection (e) at the end thereof as follows:

''(e) SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—The Secretary shall promulgate regulations to ensure the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

''(1) EFFICIENT ADMINISTRATION.—In order to improve the ability to manage and administer the Federal interest in revolving loan funds and in accordance with regulation issued for such purposes, the Secretary may amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria. In addition, the Secretary may assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation and a third party may retain assets of the fund to defray costs related to liquidation. The Secretary may also take such other actions with respect to management and administration as the Secretary determines to be appropriate to carry out the purposes of this Act, including actions to enable revolving loan fund operators to sell or securitize loans to the secondary market (except that such actions may not include issuance of a Federal guaranty by the Secretary).

''(2) RELEASE OF FEDERAL INTERESTS.—The Secretary may release, in whole or in part, any property interest in connection with a revolving loan fund grant after the date that is 20 years after the date on which the grant was awarded, provided that the recipient—

''(A) is in compliance with the terms of its grant and operating the fund at an acceptable level of performance as determined by the Secretary; and

''(B) reimburses the government prior to the release for the amount of the Secretary's investment in the fund or the pro-rata share of the fund at the time of the release, whichever is less.

Any action taken by the Secretary pursuant to this subsection with respect to a revolving loan fund shall not constitute a new obligation provided that all grant funds associated with the original grant award have been disbursed to the recipient.''.

SEC. 12. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

Section 211 of PWEDA (42 U.S.C. §3151) is amended to read as follows:

''SEC. 211. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

''In any case in which the Secretary has made a grant for a construction project under sections 201 or 209 of this title, and before closeout of the project, the Secretary determines that the cost of the project based on the designs and specifications that were the basis of the grant has decreased because of decreases in costs—

''(1) without further appropriations action, the Secretary may approve the use of the excess funds or a portion of the funds to improve the project; and

''(2) any amount of excess funds remaining after application of paragraph (1) may used for other investments authorized for support under this Act.

In addition to paragraphs (1) and (2) of this section, in the event of construction

underruns in projects utilizing funds transferred from other Federal agencies pursuant to section 604 of this Act, the Secretary may utilize thee funds in conjunction with paragraphs (1) and (2) with the approval of the originating agency or will return the funds to the originating agency.''.

SEC. 13. SPECIAL IMPACT AREAS.

Title II of PWEDA is further amended by adding a new section 214 as follows:

''SEC. 214. SPECIAL IMPACT AREAS.

''SPECIAL IMPACT AREAS.—The Secretary is authorized to make grants, enter into contracts and provide technical assistance for projects and programs that the Secretary finds will fulfill a pressing need of the area and be useful in alleviating or preventing conditions of excessive unemployment or underemployment or assist in providing useful employment opportunities for the unemployed or underemployed residents in the areas. In extending assistance under this section, the Secretary may waive, in whole or in part, as appropriate, the provisions of section 302 of this Act provided that the Secretary determines that such assistance will carry out the purposes of the Act.''.

SEC. 14. PERFORMANCE INCENTIVES.

Title II of PWEDA is further amended by adding a new section 215 as follows:

''SEC. 215. PERFORMANCE INCENTIVES.

''(a) In accordance with regulations issued for such purposes, the Secretary may award transferable performance credits in an amount that does not exceed 10 percent of the grant amount awarded under sections 201 or 209 of this Act on or after the effective date of this amendment. The Secretary shall base such performance incentives on the extent to which a recipient meets or exceeds performance requirements established in connection with extension of the assistance.

''(b) A recipient awarded a transferable performance credit under this section may redeem the credit to increase the Federal share of a subsequent grant funded under sections 201 and 209 of this Act above the maximum Federal share allowable under section 204 up to 80 percent of the project cost. A performance credit must be redeemed within 5 years of its issue date.

''(c) An original recipient may also sell or transfer the credit in its entirety to another eligible recipient for use in connection with a grant approved by the Secretary under this Act without reimbursement to the Secretary for redemption in accordance with subsection (b) above.

''(d) The Secretary shall attach such terms and conditions or limitations as the Secretary deems appropriate in issuing a performance credit. Performance credits shall be paid out of appropriations for economic development assistance programs made available in the year of redemption to the extent of availability.

''(e) The Secretary shall include information regarding issuance of performance credits in the annual report under section 603 of this Act.''.

SEC. 15. COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES.

Sub-paragraph (a)(3)(A) of section 302 of PWEDA (42 U.S.C. §3162) is amended by adding ''maximizes effective development and use of the workforce (consistent with any applicable state and local workforce investment strategy under the Workforce Investment Act of 1998 (29 U.S.C. §2801 et. seq.),'' between ''access,'' and ''enhances''.

SEC. 16. DESIGNATION OF ECONOMIC DEVELOPMENT DISTRICTS.

Sub-paragraph (a)(3)(B) of section 401 of PWEDA (42 U.S.C. §3171) is amended by striking ''by each affected State and''.

SEC. 17. DISTRICT INCENTIVES.

Section 403 of PWEDA (42 U.S.C. §3173) is amended by striking it in its entirety and re-designating sections 404 and 405 as sections 403 and 404. Section 403 as re-designated is amended by adding at the end the following new sentence:

''If any part of an economic development district is in a region covered by one or more other Regional Commissions as defined in section 3(8) of this Act, the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the affected regional commission.''.

SEC. 18. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE.

Section 502 of PWEDA (42 U.S.C. §3192) is amended to read as follows:

''SEC. 502. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE.

''In carrying out this Act, the Secretary shall—

''(1) maintain a central information clearinghouse on the Internet with information on economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal government, links to State economic development organizations, and links to other appropriate economic development resources;

''(2) assist potential and actual applications for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal and State laws in locating and applying for the assistance;

''(3) assist areas described in section 301(a) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas; and

''(4) obtain appropriate information from other Federal agencies needed to carry out the duties under this Act.''.

SEC. 19. REMOVAL OF UNUSED AUTHORITY.

Section 505 of PWEDA (42 U.S.C. §3195) is amended by striking it in its entirety and sections 506 and 507 are re-designated as sections 505 and 506.

SEC. 20. PERFORMANCE EVALUATIONS OF GRANT RECIPIENTS.

Section 505 of PWEDA (42 U.S.C. §3196) as re-designated is amended as follows:

(1) In subsection (c), strike ''after the effective date of the Economic Development Administration Reform Act of 1998''.

(2) In paragraph (d)(2), strike ''and'' before ''disseminating results'' and insert '', and measuring the outcome-based results of the university centers' activities'' before the period at the end thereof.

(3) In paragraph (d)(3) of section 506, insert before the period at the end thereof ''as evidenced by outcome-based results, including the number of jobs created or retained, and amount of private-sector funds leveraged''.

(4) In subsection (e) of section 506, strike ''university center or'' each occasion it occurs.

SEC. 21. CITATION CORRECTIONS.

Section 602 of PWEDA (42 U.S.C. §3212) is amended by striking the citations to ''40 U.S.C. §276A–276A–5'' and ''section 276c'' and inserting in lieu thereof, ''40 U.S.C. §3141 et seq.'' and ''section 3145'' respectively.

SEC. 22. DELETION OF UNNECESSARY PROVISION.

Section 609 of PWEDA (42 U.S.C. §3219) is amended by striking subsection (a) in its entirety and striking the subsection designation ''(b)''.

SEC. 23. GENERAL AUTHORIZATION OF APPROPRIATIONS.

Section 701 of PWEDA (42 U.S.C. §3231) is amended to read as follows:

''SEC 701. GENERAL AUTHORIZATION OF APPROPRIATIONS.

''(a) ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS.—There are authorized to be appropriated for economic development assistance programs to carry out this Act $331,027,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005, 2006, 2007, and 2008, to remain available until expended.

''(b) SALARIES AND EXPENSES.—There are authorized to be appropriated for salaries and expenses of administering this Act $33,377,000 for fiscal year 2004, and such sums as may be necessary for each of the fiscal years from 2005 through 2008, to remain available until expended.''.

Mr. INHOFE. Mr. President, today I join my colleague from Missouri, Senator BOND, in introducing by request a bill to reauthorize the Economic Development Administration.

EDA works with partners in local communities to create wealth and minimize poverty by promoting favorable business environments to attract private investment. Studies show that EDA uses Federal dollars efficiently and effectively. EDA's average cost of creating and retaining long-term jobs is among the lowest in government.

In my home State of Oklahoma, we have some communities that struggle with economic distress, and EDA has worked long and hard with those communities to bring in private capital investment and jobs. In fact, over the last ten years, EDA projects have resulted in more than 15,000 jobs being created or saved. With an investment of about $53 million, we have leveraged another 50 million in State and local dollars and more than 1.1 billion in private sector dollars. I would call that a wonderful success story.

I am pleased that the President has chosen to send to Congress a reauthorization bill for this agency. His bill promotes coordination, flexibility and performance—all excellent goals. The EDA's authorization is set to expire on September 30, 2003, and I look forward to working with the Administration, as well as my colleagues here in the Senate and in the House of Representatives, to try to reauthorize it before then.

By Mr. HATCH (for himself, Mr. JEFFORDS, Mr. GRASSLEY, Mrs. LINCOLN, and Mr. BINGAMAN):

S. 1135. A bill to amend title XVIII of the Social Security Act to establish a uniform national medicare physician fee schedule; to the Committee on Finance.

Mr. HATCH. Mr. President, today I am pleased to introduce the ''Medicare Physician Payment Equity Act of 2003,'' a bill that corrects a long-standing inequity in Medicare reimbursement to rural physicians. I am delighted that my colleagues, Senators JEFFORDS, GRASSLEY, LINCOLN, and BINGAMAN have joined me in addressing this issue and introducing this bill.

Although many Americans are not aware of it, Medicare currently reimburses physicians practicing in many

rural areas at a lower rate than those practicing in more densely populated areas. A complicated formula, the geographic physician cost index, reimburses physicians according to presumed regional differences in the costs of their work, practice expenses, and medical liability insurance premiums. But in almost every case, this formula penalizes physicians who practice in rural settings.

As a result, the unfortunate effect of the current formula is that it may contribute to regional disparities in access to health care. Rural areas tend to have fewer physicians, fewer hospitals and patients often have less access to subspecialty care. Penalizing doctors who practice in rural settings by paying them substantially less than their urban colleagues may contribute to this inequity in access to care.

According to the Rural Policy Research Institute, the Medicare payment for an intermediate office outpatient visit in 2003 is 30 percent higher in New York City, $59.33, than it is in St. George, UT, $45.75, and the reimbursement for an emergency room visit is 22 percent higher in New York City, $161.82, than it is in St. George, UT, $131.96.

Proponents of this system that pays doctors differently for the same work claim that the purchasing power of physician compensation should be similar regardless of where the work is performed. But others, and I am one of them, believe that doctors should be compensated equally and appropriately for their work regardless of where that work is performed. I believe that it is time that we provide physicians with equal pay for equal work. Physicians deserve it and their patients do also. After all, the citizen in Utah pays Federal taxes at the same rate as the citizen in New York. Why should the citizen in Utah receive cheaper service?

The practice expense component of the geographic physician cost index also penalizes rural physicians and their patients. Proponents of the current system claim that it is more expensive for doctors to practice medicine in urban areas where the cost of living is higher and the cost of paying employees is thought to be higher. The practice expense geographic physician cost index rewards physicians in these ''high practice expense'' areas by reimbursing physician services at a higher rate.

While it might be tempting to think that practice expenses in urban areas are higher than those in rural areas, this is not necessarily the case. Rural physicians sometimes must offer higher wages to attract nurses and technicians to work in their communities. Furthermore, the formula that is used to calculate the geographic practice expense does not take certain key elements into consideration. Volume discounts can result in lower costs for capital goods and supplies in densely populated areas. Furthermore, a physician in a rural area who purchases an expensive, but necessary piece of equipment, such as an ultrasound machine, may use that equipment less frequently than a physician from a densely populated area. As a result, the rural doctor may not be able to pay for the capital investment as quickly as the urban physician. The practice expense for the rural physician in such a case is higher.

In fact, we have known for years that additional resources are sometimes necessary to attract doctors to practice in rural settings. Physicians, nurses and allied health professionals are less prevalent and hospitals are fewer and farther between in rural settings. In some cases, certain services and subspecialty care are not available at all. For this reason, Federal and State programs have offered tuition payment and loan forgiveness programs to student physicians who agree to practice in underserved areas, many of which are rural.

Federal payment policy with respect to physician services delivered in rural and underserved areas has been described as contradictory—paying bonuses to physicians for practicing in rural and underserved areas on the one hand while devaluing physician clinical decision-making and patient services in rural areas less, on the other. The bottom line is this: For many years we have found it difficult in this country to increase access to health care and improve the quality of health care in rural communities. Penalizing physicians for practicing in rural settings just does not make sense.

All Medicare beneficiaries, whether they live in an urban or rural area, deserve excellent health care and access to outstanding doctors. The bill I am introducing today, the Medicare Physician Payment Act, addresses current disparities by creating a system that reimburses physicians equitably regardless of where they practice. The bill addresses all three components of the geographic physician cost index, work, practice expense, and medical liability costs, by increasing reimbursement for physicians in disadvantaged areas over a three-year period and by eliminating disparities in reimbursement altogether in the year four. If we pass this bill, doctors will no longer be discouraged from practicing in the rural communities that desperately need their services. I look forward to working with my colleagues in the 108th Congress to pass this legislation.

Mr. JEFFORDS. Mr. President, I am pleased to join with my colleagues Senators HATCH, GRASSLEY, LINCOLN, and BINGAMAN in introducing the Medicare Physician Payment Equity Act of 2003. This bill corrects a longstanding inequity in the Medicare Part B reimbursement methodology that pays rural physicians less than what is received by physicians for more densely populated areas who provide the same exact service. I am pleased that we are able to offer a legislative solution to this payment inequity.

Establishing Medicare reimbursement for physician services is a complex process and many factors go into setting rates. Without going into all of the intricacies of how fees are set, let me note that, for any specific service, the physician fee schedule has three components—physician work, practice expenses, and the cost of malpractice insurance. Each of these components is further subjected to a geographic adjustment, which is lower for rural areas than for urban areas.

In my own State of Vermont, we face a chronic shortage of doctors in our rural areas. Yet, when we need to find a physician for a rural clinic, we compete in a national market to find providers. The inequities in payments these physicians receive, however, makes it all the more difficult to recruit and retain physicians. Rural physicians have the same training, spend the same time with patients, and manage the same office pressures as their urban counterparts. Their work should be valued equally, and that is what this bill accomplishes.

I've heard from many people in Vermont about this issue. Tim Thompson, M.D., President of the Vermont Medical Society, expressed his concern that while Vermonters pay the same premiums as other Americans to support the Medicare program, our doctors are paid less. This occurs without regard to the quality or efficiency of health care services they provide. In fact, according to the Center for Medicare Services, Vermont physicians provide the second highest quality care in the country, but the State is ranked forty-fourth in payments per Medicare beneficiary. We should do more to reward quality health care regardless of whether it is provided in an urban or rural setting. The Vermont Medical Society has told me that they strongly support the Medicare Physician Payment Equity Act of 2003 as an important first step in reducing the existing inequities in payment levels.

I look forward to working with my colleagues to pass the Medicare Physician Payment Equity Act of 2003.

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

S. 1136. A bill to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I have sought recognition today to introduce legislation that would restate, revise and update the Soldiers' and Sailors' Civil Relief Act of 1940, SSCRA.

The SSCRA, in summary, suspends some of the legal obligations incurred by military personnel prior to entry into the service so that they might give their full attention to military duty. As was stated by the Supreme Court in LeMaistre v. Leffers, 333 U.S. 1, 6, 1948, SSCRA is to be read ''with an eye friendly to those who dropped their

affairs to answer their country's call.'' With operations in Iraq now wrapping up, it is an appropriate time for a review of this World War II-vintage legislation to see how it might be modified to better address the needs of 21st Century servicemen and women.

I should mention at this point that I am aware that a bill to revise the SSCRA, H.R. 100, is currently pending in the House, and that my colleague from Georgia, Senator Zell Miller, has introduced companion legislation in the Senate as S. 792. My legislation is similar to H.R. 100 and S. 792, but it contains modifications and additions to those bills as suggested by reservists and their families, the Department of Defense, and by other groups. It is my intention to work with Senator MILLER to craft legislation that incorporates the best features of the two bills.

This legislation would rename SSCRA the ''Servicemembers' Civil Relief Act'' to reflect that the Armed Forces are made up now of more than just soldiers and sailors, and keep in place the core protections that have been features of SSCRA for decades: stays of civil proceedings during a person's period of military service; an interest rate cap of 6 percent on debts incurred before active duty; protection from eviction and termination of preservice residential leases; and legal residency protection. But it would also add several new provisions to this core.

Currently, the Higher Education Act of 1965 prohibits the SSCRA's 6 percent interest cap from applying to Federally-insured student loans. This bill would remove that prohibition. It would also require institutions of higher education to permit students who are called to active duty to return and complete classes at no additional cost.

In addition, SSCRA now precludes evictions from premises occupied by servicemembers having a monthly rent $1200 or less. This $1200 ceiling was set in 1991; it has not been adjusted since. This legislation would raise the rent ceiling to $1950 or the amount of a servicemember's basic allowance for housing, whichever is higher. It would thereby take post-1991 inflation into account, and avoid the need for frequent amendments to the law since housing allowances are adjusted annually based on housing costs in the area where the servicemember is assigned.

When the SSCRA was originally enacted in 1940, automobiles were not commonly leased. That, of course, has changed; many people now choose leasing as a way to finance their personal transportation needs. This legislation would protect servicemembers who have leased cars—just as it does those who had chosen the more traditional form of auto financing—in two ways. First, it would prohibit lessors, like purchase financers, from repossessing personal property for nonpayment or breach without court action. Second, it would allow servicemembers called to active duty to terminate automobile leases just as they can real property leases.

This bill also takes steps to offer some protection to professionals and small business owners who are called to active duty. It would include the practice of law among the ''professional services'' for which professional liability insurance obligations could be suspended subject to mandatory reinstatement. It would also authorize the Secretary of Defense to designate other professional callings that would be subject to these protections. And it would protect the assets of small business owners during military service if the servicemember is personally liable for trade or business debts.

Since 1940, the Soldiers' and Sailors' Civil Relief Act has provided important protections to the men and women who wear the uniform. But 60-plus years later, it is time for Congress to take a critical look at this law and revise it to reflect changes in our society since it was originally enacted. With the assistance of the Department of Defense, the National Guard Bureau, the Enlisted Association of the National Guard, and the Small Business Administration, the staff of the Committee on Veterans' Affairs, most notably Mr. David Goetz, the Committee's Associate Counsel, has undertaken the painstaking review that has yielded this rather extensive bill. It is my intention to seek further comment and then guide this important reform legislation to enactment.

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. 1136

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

SECTION 1. RESTATEMENT OF ACT.

The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) is amended to read as follows:

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

''(a) SHORT TITLE.—This Act may be cited as the 'Servicemembers Civil Relief Act'.

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

''Sec. 1. Short title; table of contents.
''Sec. 2. Purposes.
''TITLE I—GENERAL PROVISIONS
''Sec. 101. Definitions.
''Sec. 102. Jurisdiction and applicability of Act.
''Sec. 103. Protection of persons secondarily liable.
''Sec. 104. Extension of protections to citizens serving with allied forces.
''Sec. 105. Notification of benefits.
''Sec. 106. Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.
''Sec. 107. Waiver of rights pursuant to written agreement.
''Sec. 108. Exercise of rights under Act not to affect certain future financial transactions.
''Sec. 109. Legal representatives.
''TITLE II—GENERAL RELIEF
''Sec. 201. Protection of servicemembers against default judgments.
''Sec. 202. Stay of proceedings when servicemember defendant has notice.
''Sec. 203. Fines and penalties under contracts.
''Sec. 204. Stay or vacation of execution of judgments, attachments, and garnishments.
''Sec. 205. Duration and term of stays; codefendants not in service.
''Sec. 206. Statute of limitations.
''Sec. 207. Maximum rate of interest on debts incurred before military service.
''TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES.
''Sec. 301. Evictions and distress.
''Sec. 302. Protection under installment contracts for purchase or lease.
''Sec. 303. Mortgages and trust deeds.
''Sec. 304. Settlement of stayed cases relating to personal property.
''Sec. 305. Termination of leases by lessees.
''Sec. 306. Protection of life insurance policy.
''Sec. 307. Enforcement of storage liens.
''Sec. 308. Extension of protections to dependents.
''TITLE IV—INSURANCE
''Sec. 401. Definitions.
''Sec. 402. Insurance rights and protections.
''Sec. 403. Application for insurance protection.
''Sec. 404. Policies entitled to protection and lapse of policies.
''Sec. 405. Policy restrictions.
''Sec. 406. Deduction of unpaid premiums.
''Sec. 407. Premiums and interest guaranteed by United States.
''Sec. 408. Regulations.
''Sec. 409. Review of findings of fact and conclusions of law.
''TITLE V—TAXES AND PUBLIC LANDS
''Sec. 501. Taxes respecting personal property, money, credits, and real property.
''Sec. 502. Rights in public lands.
''Sec. 503. Desert-land entries.
''Sec. 504. Mining claims.
''Sec. 505. Mineral permits and leases.
''Sec. 506. Perfection or defense of rights.
''Sec. 507. Distribution of information concerning benefits of title.
''Sec. 508. Land rights of servicemembers.
''Sec. 509. Regulations.
''Sec. 510. Income taxes.
''Sec. 511. Residence for tax purposes.
''TITLE VI—ADMINISTRATIVE REMEDIES
''Sec. 601. Inappropriate use of Act.
''Sec. 602. Certificates of service; persons reported missing.
''Sec. 603. Interlocutory orders.
''TITLE VII—FURTHER RELIEF
''Sec. 701. Anticipatory relief.
''Sec. 702. Power of attorney.
''Sec. 703. Professional liability protection.
''Sec. 704. Health insurance reinstatement.
''Sec. 705. Guarantee of residency for military personnel.
''Sec. 706. Business or trade obligations.
''Sec. 707. Return to classes at no extra cost.

''SEC. 2. PURPOSES.

''The purposes of this Act are—

''(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

''(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

"TITLE I—GENERAL PROVISIONS

"SEC. 101. DEFINITIONS.

''For the purposes of this Act:

''(1) SERVICEMEMBER.—The term 'servicemember' means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

''(2) MILITARY SERVICE.—

''(A) With respect to a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, the term 'military service' means active duty, as that term is defined in section 101(d)(1) of title 10, United States Code.

''(B) Active service of commissioned officers of the Public Health Service or National Oceanic and Atmospheric Administration shall be deemed to be 'military service' for the purposes of this Act.

''(C) Service of a member of the National Guard 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 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 shall be deemed to be 'military service' for the purposes of this Act.

''(3) PERIOD OF MILITARY SERVICE.—The term 'period of military service' means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

''(4) DEPENDENT.—The term 'dependent', with respect to a servicemember, means—

''(A) the servicemember's spouse;

''(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

''(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

''(5) COURT.—The term 'court' means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

''(6) STATE.—The term 'State' includes—

''(A) a commonwealth, territory, or possession of the United States; and

''(B) the District of Columbia.

''(7) SECRETARY CONCERNED.—The term 'Secretary concerned'—

''(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

''(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

''(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

''(8) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

"SEC. 102. JURISDICTION AND APPLICABILITY OF ACT.

''(a) JURISDICTION.—This Act applies to—

''(1) the United States;

''(2) each of the States, including the political subdivisions thereof; and

''(3) all territory subject to the jurisdiction of the United States.

''(b) APPLICABILITY TO PROCEEDINGS.—This Act applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

''(c) COURT IN WHICH APPLICATION MAY BE MADE.—When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

"SEC. 103. PROTECTION OF PERSONS SECONDARILY LIABLE.

''(a) EXTENSION OF PROTECTION WHEN ACTIONS STAYED, POSTPONED, OR SUSPENDED.—Whenever pursuant to this Act a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

''(b) VACATION OR SET-ASIDE OF JUDGMENTS.—When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

''(c) BAIL BOND NOT TO BE ENFORCED DURING PERIOD OF MILITARY SERVICE.—A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

''(d) WAIVER OF RIGHTS.—

''(1) WAIVERS NOT PRECLUDED.—This Act does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

''(2) WAIVER INVALIDATED UPON ENTRANCE TO MILITARY SERVICE.—If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106.

"SEC. 104. EXTENSION OF PROTECTIONS TO CITIZENS SERVING WITH ALLIED FORCES.

''A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act if that service with the allied force is similar to military service as defined in this Act. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

"SEC. 105. NOTIFICATION OF BENEFITS.

''The Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided to persons in military service and to persons entering military service.

"SEC. 106. EXTENSION OF RIGHTS AND PROTECTIONS TO RESERVES ORDERED TO REPORT FOR MILITARY SERVICE AND TO PERSONS ORDERED TO REPORT FOR INDUCTION.

''(a) RESERVES ORDERED TO REPORT FOR MILITARY SERVICE.—A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

''(b) PERSONS ORDERED TO REPORT FOR INDUCTION.—A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

"SEC. 107. WAIVER OF RIGHTS PURSUANT TO WRITTEN AGREEMENT.

''(a) IN GENERAL.—A servicemember may waive any of the rights and protections provided by this Act. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

''(b) ACTIONS REQUIRING WAIVERS IN WRITING.—The requirement in subsection (a) for a written waiver applies to the following:

''(1) The modification, termination, or cancellation of—

''(A) a contract, lease, or bailment; or

''(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

''(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

''(A) is security for any obligation; or

''(B) was purchased or received under a contract, lease, or bailment.

''(c) COVERAGE OF PERIODS AFTER ORDERS RECEIVED.—For the purposes of this section—

''(1) a person to whom section 106 applies shall be considered to be a servicemember; and

''(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 shall be considered to be a period of military service.

"SEC. 108. EXERCISE OF RIGHTS UNDER ACT NOT TO AFFECT CERTAIN FUTURE FINANCIAL TRANSACTIONS.

''Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

''(1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.

''(2) With respect to a credit transaction between a creditor and the servicemember—

''(A) a denial or revocation of credit by the creditor;

''(B) a change by the creditor in the terms of an existing credit arrangement; or

''(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

''(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

''(4) A refusal by an insurer to insure the servicemember.

''(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

''(6) A change in the terms offered or conditions required for the issuance of insurance.

''SEC. 109. LEGAL REPRESENTATIVES.

''(a) REPRESENTATIVE.—A legal representative of a servicemember for purposes of this Act is either of the following:

''(1) An attorney acting on the behalf of a servicemember.

''(2) An individual possessing a power of attorney.

''(b) APPLICATION.—Whenever the term 'servicemember' is used in this Act, such term shall be treated as including a reference to a legal representative of the servicemember.

''TITLE II—GENERAL RELIEF

''SEC. 201. PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

''(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant does not make an appearance.

''(b) AFFIDAVIT REQUIREMENT.—

''(1) PLAINTIFF TO FILE AFFIDAVIT.—In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

''(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

''(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

''(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY SERVICE.—If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

''(3) DEFENDANT'S MILITARY STATUS NOT ASCERTAINED BY AFFIDAVIT.—If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act.

''(4) SATISFACTION OF REQUIREMENT FOR AFFIDAVIT.—The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

''(c) PENALTY FOR MAKING OR USING FALSE AFFIDAVIT.—A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(d) STAY OF PROCEEDINGS.—In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

''(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

''(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

''(e) INAPPLICABILITY OF SECTION 202 PROCEDURES.—A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202.

''(f) SECTION 202 PROTECTION.—If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202.

''(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS.—

''(1) AUTHORITY FOR COURT TO VACATE OR SET ASIDE JUDGMENT.—If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

''(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

''(B) the servicemember has a meritorious or legal defense to the action or some part of it.

''(2) TIME FOR FILING APPLICATION.—An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

''(h) PROTECTION OF BONA FIDE PURCHASER.—If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

''SEC. 202. STAY OF PROCEEDINGS WHEN SERVICEMEMBER DEFENDANT HAS NOTICE.

''(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant at the time of filing an application under this section—

''(1) is in military service or is within 90 days after termination of or release from military service; and

''(2) has received notice of the action or proceeding.

''(b) AUTOMATIC STAY.—

''(1) AUTHORITY FOR STAY.—At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

''(2) CONDITIONS FOR STAY.—An application for a stay under paragraph (1) shall include the following:

''(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

''(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

''(c) APPLICATION NOT A WAIVER OF DEFENSES.—An application for a stay by a servicemember or a servicemember's representative under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

''(d) ADDITIONAL STAY.—

''(1) APPLICATION.—A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

''(2) APPOINTMENT OF COUNSEL WHEN ADDITIONAL STAY REFUSED.—If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

''(e) COORDINATION WITH SECTION 201.—A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201.

''(f) INAPPLICABILITY TO SECTION 301.—The protections of this section do not apply to section 301.

''SEC. 203. FINES AND PENALTIES UNDER CONTRACTS.

''(a) PROHIBITION OF PENALTIES.—When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

''(b) REDUCTION OR WAIVER OF FINES OR PENALTIES.—If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if—

''(1) the servicemember was in military service at the time the fine or penalty was incurred; and

''(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

''SEC. 204. STAY OR VACATION OF EXECUTION OF JUDGMENTS, ATTACHMENTS, AND GARNISHMENTS.

''(a) COURT ACTION UPON MATERIAL AFFECT DETERMINATION.—If a servicemember, in the opinion of the court, is materially affected

by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

''(1) stay the execution of such judgment or order entered against the servicemember; and

''(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after such judgment.

''(b) APPLICABILITY.—This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 60 days after such service terminates.

''SEC. 205. DURATION AND TERM OF STAYS; CODEFENDANTS NOT IN SERVICE.

''(a) PERIOD OF STAY.—A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

''(b) CODEFENDANTS.—If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court.

''(c) INAPPLICABILITY OF SECTION.—This section does not apply to sections 202 and 701.

''SEC. 206. STATUTE OF LIMITATIONS.

''(a) TOLLING OF STATUTES OF LIMITATION DURING MILITARY SERVICE.—The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

''(b) REDEMPTION OF REAL PROPERTY.—A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

''(c) INAPPLICABILITY TO INTERNAL REVENUE LAWS.—This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

''SEC. 207. MAXIMUM RATE OF INTEREST ON DEBTS INCURRED BEFORE MILITARY SERVICE.

''(a) INTEREST RATE LIMITATION.—

''(1) 6-PERCENT LIMIT.—An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.

''(2) APPLICABILITY TO STUDENT LOANS.—Notwithstanding section 428(d) of the Higher Education Act of 1965 (20 U.S.C. 1078(d)), paragraph (1) applies with respect to an obligation or liability of a servicemember, or the servicemember and the servicemember's spouse jointly, entered into under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.)

''(3) FORGIVENESS OF INTEREST IN EXCESS OF 6 PERCENT.—Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

''(4) PREVENTION OF ACCELERATION OF PRINCIPAL.—The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (3) that is allocable to the period for which such payment is made.

''(b) IMPLEMENTATION OF LIMITATION.—

''(1) WRITTEN NOTICE TO CREDITOR.—In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

''(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY.—Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

''(c) CREDITOR PROTECTION.—A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

''(d) INTEREST DEFINED.—As used in this section, the term 'interest' means simple interest plus service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

''TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

''SEC. 301. EVICTIONS AND DISTRESS.

''(a) COURT-ORDERED EVICTION.—Except by court order, a landlord (or another person with paramount title) may not—

''(1) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

''(A) that are occupied or intended to be occupied primarily as a residence; and

''(B) for which the monthly rent does not exceed the greater of—

''(i) $1,950; or

''(ii) the monthly basic allowance for housing to which the servicemember is entitled under section 403 of title 37, United States Code; or

''(2) subject such premises to a distress during the period of military service.

''(b) STAY OF EXECUTION.—

''(1) COURT AUTHORITY.—Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service—

''(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

''(B) adjust the obligation under the lease to preserve the interests of all parties.

''(2) RELIEF TO LANDLORD.—If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

''(c) PENALTIES.—

''(1) MISDEMEANOR.—Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

''(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER.—To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

''(e) LIMITATION OF APPLICABILITY.—Section 202 is not applicable to this section.

''SEC. 302. PROTECTION UNDER INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE.

''(a) PROTECTION UPON BREACH OF CONTRACT.—

''(1) PROTECTION AFTER ENTERING MILITARY SERVICE.—After a servicemember enters military service, a contract by the servicemember for—

''(A) the purchase of real or personal property (including a motor vehicle); or

''(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

''(2) APPLICABILITY.—This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

''(b) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 108, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

''(c) AUTHORITY OF COURT.—In a hearing based on this section, the court—

''(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

''(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

''(3) may make other disposition as is equitable to preserve the interests of all parties.

''SEC. 303. MORTGAGES AND TRUST DEEDS.

''(a) MORTGAGE AS SECURITY.—This section applies only to an obligation on real or personal property owned by a servicemember that—

''(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

''(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

''(b) STAY OF PROCEEDINGS AND ADJUSTMENT OF OBLIGATION.—In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service—

''(1) stay the proceedings for a period of time as justice and equity require, or

''(2) adjust the obligation to preserve the interests of all parties.

''(c) SALE OR FORECLOSURE.—A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the period of the servicemember's military service except—

''(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

''(2) if made pursuant to an agreement as provided in section 108.

''(d) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

''SEC. 304. SETTLEMENT OF STAYED CASES RELATING TO PERSONAL PROPERTY.

''(a) APPRAISAL OF PROPERTY.—When a stay is granted pursuant to this Act in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

''(b) EQUITY PAYMENT.—Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

''SEC. 305. TERMINATION OF LEASES BY LESSEES.

''(a) COVERED LEASES OF REAL PROPERTY.—This section applies to the lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

''(1) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

''(2) the servicemember, while in military service, executes a lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit for a period of not less than 90 days.

''(b) COVERED LEASES OF VEHICLES.—This section applies to the lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents if the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service.

''(c) NOTICE TO LESSOR.—

''(1) DELIVERY OF NOTICE.—A lease described in subsection (a) or (b) is terminated when written notice is delivered by the lessee to the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee).

''(2) TIME FOR NOTICE.—The written notice may be delivered at any time after the lessee's entry into military service or, in the case of a lease described in subsection (a), the date of the military orders for a permanent change of station or to deploy for a period of not less than 90 days.

''(3) NATURE OF NOTICE.—Delivery may be accomplished—

''(A) by hand delivery;

''(B) by private business carrier; or

''(C) by placing the written notice in an envelope with sufficient postage and addressed to the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee) and depositing the written notice in the United States mails.

''(d) EFFECTIVE DATE OF TERMINATION.—

''(1) LEASE WITH MONTHLY RENT.—Termination of a lease providing for monthly payment of rent shall be effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice is delivered.

''(2) OTHER LEASE.—All other leases terminate on the last day of the month following the month in which the notice is delivered.

''(e) ARREARAGES.—Rents or lease amounts unpaid for the period preceding termination shall be paid on a prorated basis.

''(f) AMOUNTS PAID IN ADVANCE.—Rents or lease amounts paid in advance for a period succeeding termination shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent).

''(g) RELIEF TO LESSOR.—Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

''(h) PENALTIES.—

''(1) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent or lease payments accruing after the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

''SEC. 306. PROTECTION OF LIFE INSURANCE POLICY.

''(a) ASSIGNMENT OF POLICY PROTECTED.—If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

''(b) EXCEPTION.—The prohibition in subsection (a) shall not apply—

''(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

''(2) when the premiums on the policy are due and unpaid; or

''(3) upon the death of the insured.

''(c) ORDER REFUSED BECAUSE OF MATERIAL AFFECT.—A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

''(d) TREATMENT OF GUARANTEED PREMIUMS.—For purposes of this subsection, premiums guaranteed under the provisions of title IV shall not be considered due and unpaid.

''(e) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

''SEC. 307. ENFORCEMENT OF STORAGE LIENS.

''(a) LIENS.—

''(1) LIMITATION ON FORECLOSURE OR ENFORCEMENT.—A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

''(2) LIEN DEFINED.—For the purposes of paragraph (1), the term 'lien' includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

''(b) STAY OF PROCEEDINGS.—In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service—

''(1) stay the proceeding for a period of time as justice and equity require; or

''(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303.

''(c) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

''SEC. 308. EXTENSION OF PROTECTIONS TO DEPENDENTS.

''Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

''TITLE IV—INSURANCE

''SEC. 401. DEFINITIONS.

''For the purposes of this title:

''(1) POLICY.—The term 'policy' means any contract for whole, endowment, universal, or term life insurance, including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which—

''(A) provides that the insurer may not—

''(i) decrease the amount of coverage or increase the amount of premiums if the insured is in military service; or

''(ii) limit or restrict coverage for any activity required by military service; and

''(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

''(2) PREMIUM.—The term 'premium' means the amount specified in an insurance policy to be paid to keep the policy in force.

''(3) INSURED.—The term 'insured' means a servicemember whose life is insured under a policy.

''(4) INSURER.—The term 'insurer' includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

''SEC. 402. INSURANCE RIGHTS AND PROTECTIONS.

''(a) RIGHTS AND PROTECTIONS.—The rights and protections under this title apply to the insured when the insured, the insured's designee, or the insured's beneficiary applies in writing for protection under this title, unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title.

''(b) NOTIFICATION AND APPLICATION.—The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

''(c) LIMITATION ON AMOUNT.—The total amount of life insurance coverage protection provided by this title for a servicemember may not exceed $250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

''SEC. 403. APPLICATION FOR INSURANCE PROTECTION.

''(a) APPLICATION PROCEDURE.—An application for protection under this title shall—

''(1) be in writing and signed by the insured, the insured's designee, or the insured's beneficiary, as the case may be;

''(2) identify the policy and the insurer; and

''(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title.

''(b) ADDITIONAL REQUIREMENTS.—The Secretary of Veterans Affairs may require additional information from the applicant, the insured, and the insurer to determine if the policy is entitled to protection under this title.

''(c) NOTICE TO THE SECRETARY BY THE INSURED.—Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

''(d) POLICY MODIFICATION.—Upon application for protection under this title, the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title full force and effect.

''SEC. 404. POLICIES ENTITLED TO PROTECTION AND LAPSE OF POLICIES.

''(a) DETERMINATION.—The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title and shall notify the insured and the insurer of that determination.

''(b) LAPSE PROTECTION.—A policy that the Secretary determines is entitled to protection under this title shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date of the application for protection.

''(c) TIME APPLICATION.—The protection provided by this title applies during the insured's period of military service and for a period of two years thereafter.

''SEC. 405. POLICY RESTRICTIONS.

''(a) DIVIDENDS.—While a policy is protected under this title, a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

''(b) SPECIFIC RESTRICTIONS.—While a policy is protected under this title, cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title.

''SEC. 406. DEDUCTION OF UNPAID PREMIUMS.

''(a) SETTLEMENT OF PROCEEDS.—If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title, the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title, together with interest due at the rate fixed in the policy for policy loans.

''(b) INTEREST RATE.—If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

''(c) REPORTING REQUIREMENT.—The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

''SEC. 407. PREMIUMS AND INTEREST GUARANTEED BY UNITED STATES.

''(a) GUARANTEE OF PREMIUMS AND INTEREST BY THE UNITED STATES.—

''(1) GUARANTEE.—Payment of premiums, and interest on premiums at the rate specified in section 406, which become due on a policy under the protection of this title is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title expires, the amount due shall be treated by the insurer as a policy loan on the policy.

''(2) POLICY TERMINATION.—If, at the expiration of insurance protection under this title, the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

''(b) RECOVERY FROM INSURED OF AMOUNTS PAID BY THE UNITED STATES.—

''(1) DEBT PAYABLE TO THE UNITED STATES.—The amount paid by the United States to an insurer under this title shall be a debt payable to the United States by the insured on whose policy payment was made.

''(2) COLLECTION.—Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

''(3) DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

''(c) CREDITING OF AMOUNTS RECOVERED.—Any amounts received by the United States as repayment of debts incurred by an insured under this title shall be credited to the appropriation for the payment of claims under this title.

''SEC. 408. REGULATIONS.

''The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title.

''SEC. 409. REVIEW OF FINDINGS OF FACT AND CONCLUSIONS OF LAW.

''The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title may be reviewed by the Board of Veterans' Appeals and the United States Court of Appeals for Veterans Claims.

''TITLE V—TAXES AND PUBLIC LANDS

''SEC. 501. TAXES RESPECTING PERSONAL PROPERTY, MONEY, CREDITS, AND REAL PROPERTY.

''(a) APPLICATION.—This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

''(1) personal property; or

''(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

''(A) before the servicemember's entry into military service; and

''(B) during the time the tax or assessment remains unpaid.

''(b) SALE OF PROPERTY.—

''(1) LIMITATION ON SALE OF PROPERTY TO ENFORCE TAX ASSESSMENT.—Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

''(2) STAY OF COURT PROCEEDINGS.—A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

''(c) REDEMPTION.—When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

''(d) INTEREST ON TAX OR ASSESSMENT.—Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

''(e) JOINT OWNERSHIP APPLICATION.—This section applies to all forms of property described in subsection (a) owned individually

by a servicemember or jointly by a servicemember and a dependent or dependents.

"SEC. 502. RIGHTS IN PUBLIC LANDS.

''(a) RIGHTS NOT FORFEITED.—The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

''(b) TEMPORARY SUSPENSION OF PERMITS OR LICENSES.—If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

''(c) REGULATIONS.—Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

"SEC. 503. DESERT-LAND ENTRIES.

''(a) DESERT-LAND RIGHTS NOT FORFEITED.—A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation—

''(1) for failure to expend any required amount per acre per year in improvements upon the claim;

''(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

''(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

''(b) SERVICE-RELATED DISABILITY.—If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

''(c) FILING REQUIREMENT.—In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

"SEC. 504. MINING CLAIMS.

''(a) REQUIREMENTS SUSPENDED.—The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

''(b) REQUIREMENTS.—The provisions in section 2324 of the Revised Statutes that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than $100 worth of labor shall be performed or improvements made during each year.

''(c) PERIOD OF PROTECTION FROM FORFEITURE.—A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

''(d) FILING REQUIREMENT.—In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

"SEC. 505. MINERAL PERMITS AND LEASES.

''(a) SUSPENSION DURING MILITARY SERVICE.—A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

''(b) NOTIFICATION.—In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

''(c) CONTRACT MODIFICATION.—This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

"SEC. 506. PERFECTION OR DEFENSE OF RIGHTS.

''(a) RIGHT TO TAKE ACTION NOT AFFECTED.—This title shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

''(b) AFFIDAVITS AND PROOFS.—

''(1) IN GENERAL.—A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

''(2) LEGAL STATUS OF AFFIDAVITS.—Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

"SEC. 507. DISTRIBUTION OF INFORMATION CONCERNING BENEFITS OF TITLE.

''(a) DISTRIBUTION OF INFORMATION BY SECRETARY CONCERNED.—The Secretary concerned shall issue to servicemembers information explaining the provisions of this title.

''(b) APPLICATION FORMS.—The Secretary concerned shall provide application forms to servicemembers requesting relief under this title.

''(c) INFORMATION FROM SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title (other than sections 501, 510, and 511) and related application forms.

"SEC. 508. LAND RIGHTS OF SERVICEMEMBERS.

''(a) NO AGE LIMITATIONS.—Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

''(b) RESIDENCY REQUIREMENT.—Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

''(c) ENTRY APPLICATIONS.—Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

"SEC. 509. REGULATIONS.

''The Secretary of the Interior may issue regulations necessary to carry out this title (other than sections 501, 510, and 511).

"SEC. 510. INCOME TAXES.

''(a) DEFERRAL OF TAX.—Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

''(b) ACCRUAL OF INTEREST OR PENALTY.—No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

''(c) STATUTE OF LIMITATIONS.—The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

''(d) APPLICATION LIMITATION.—This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

"SEC. 511. RESIDENCE FOR TAX PURPOSES.

''(a) RESIDENCE OR DOMICILE.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

''(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

''(c) PERSONAL PROPERTY.—

''(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

''(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

''(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with

respect to personal property used in or arising from a trade or business, if it has jurisdiction.

''(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

''(d) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

''(e) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

''(f) DEFINITIONS.—For purposes of this section:

''(1) PERSONAL PROPERTY.—The term 'personal property' means intangible and tangible property (including motor vehicles).

''(2) TAXATION.—The term 'taxation' includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

''(3) TAX JURISDICTION.—The term 'tax jurisdiction' means a State or a political subdivision of a State.

''TITLE VI—ADMINISTRATIVE REMEDIES

''SEC. 601. INAPPROPRIATE USE OF ACT.

''If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

''SEC. 602. CERTIFICATES OF SERVICE; PERSONS REPORTED MISSING.

''(a) PRIMA FACIE EVIDENCE.—In any proceeding under this Act, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

''(1) That a person named is, is not, has been, or has not been in military service.

''(2) The time and the place the person entered military service.

''(3) The person's residence at the time the person entered military service.

''(4) The rank, branch, and unit of military service of the person upon entry.

''(5) The inclusive dates of the person's military service.

''(6) The monthly pay received by the person at the date of the certificate's issuance.

''(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

''(b) CERTIFICATES.—The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

''(c) TREATMENT OF SERVICEMEMBERS IN MISSING STATUS.—A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

''SEC. 603. INTERLOCUTORY ORDERS.

''An interlocutory order issued by a court under this Act may be revoked, modified, or extended by the court upon its own motion or otherwise, upon notification to affected parties as required by the court.

''TITLE VII—FURTHER RELIEF

''SEC. 701. ANTICIPATORY RELIEF.

''(a) APPLICATION FOR RELIEF.—A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

''(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

''(2) from a tax or assessment falling due before or during the servicemember's military service.

''(b) TAX LIABILITY OR ASSESSMENT.—In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

''(1) STAY OF ENFORCEMENT OF REAL ESTATE CONTRACTS.—

''(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation—

''(i) during the servicemember's period of military service; and

''(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

''(B) Any stay under this paragraph shall be—

''(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

''(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

''(2) STAY OF ENFORCEMENT OF OTHER CONTRACTS.—

''(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

''(i) during the servicemember's military service; and

''(ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

''(B) Any stay under this paragraph shall be—

''(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and

''(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

''(c) AFFECT OF STAY ON FINE OR PENALTY.—When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

''SEC. 702. POWER OF ATTORNEY.

''(a) AUTOMATIC EXTENSION.—A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney—

''(1) was duly executed by the servicemember—

''(A) while in military service; or

''(B) before entry into military service but after the servicemember—

''(i) received a call or order to report for military service; or

''(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

''(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and

''(3) expires by its terms after the servicemember entered a missing status.

''(b) LIMITATION ON POWER OF ATTORNEY EXTENSION.—A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

''SEC. 703. PROFESSIONAL LIABILITY PROTECTION.

''(a) APPLICABILITY.—This section applies to a servicemember who—

''(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

''(2) immediately before receiving the order to active duty—

''(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

''(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

''(b) SUSPENSION OF COVERAGE.—

''(1) SUSPENSION.—Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember, or the servicemember's legal representative, by the insurance carrier.

''(2) PREMIUMS FOR SUSPENDED CONTRACTS.—A professional liability insurance carrier—

''(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

''(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

''(3) NONLIABILITY OF CARRIER DURING SUSPENSION.—A professional liability insurance carrier shall not be liable with respect to

any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

''(4) CERTAIN CLAIMS CONSIDERED TO ARISE BEFORE SUSPENSION.—For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

''(c) REINSTATEMENT OF COVERAGE.—

''(1) REINSTATEMENT REQUIRED.—Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

''(2) TIME AND PREMIUM FOR REINSTATEMENT.—The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

''(3) PERIOD OF REINSTATED COVERAGE.—The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

''(d) INCREASE IN PREMIUM.—

''(1) LIMITATION ON PREMIUM INCREASES.—An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

''(2) EXCEPTION.—Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

''(e) CONTINUATION OF COVERAGE OF UNAFFECTED PERSONS.—This section does not—

''(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

''(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

''(f) STAY OF CIVIL OR ADMINISTRATIVE ACTIONS.—

''(1) STAY OF ACTIONS.—A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

''(A) the action was commenced during the period of the suspension;

''(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

''(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

''(2) DATE OF COMMENCEMENT OF ACTION.—Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

''(g) EFFECT OF SUSPENSION UPON LIMITATIONS PERIOD.—In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

''(h) DEATH DURING PERIOD OF SUSPENSION.—If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

''(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

''(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

''(i) DEFINITIONS.—For purposes of this section:

''(1) The term 'active duty' has the meaning given that term in section 101(d)(1) of title 10, United States Code.

''(2) The term 'profession' includes occupation.

''(3) The term 'professional' includes occupational.

''SEC. 704. HEALTH INSURANCE REINSTATEMENT.

''(a) REINSTATEMENT OF HEALTH INSURANCE.—A servicemember who, by reason of military service as defined in section 703(a)(1), is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that—

''(1) was in effect on the day before such service commenced; and

''(2) was terminated effective on a date during the period of such service.

''(b) NO EXCLUSION OR WAITING PERIOD.—The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if—

''(1) the condition arose before or during the period of such service;

''(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

''(3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

''(c) EXCEPTIONS.—Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

''(d) TIME FOR APPLYING FOR REINSTATEMENT.—An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

''SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL.

''For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

''(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

''(2) be deemed to have acquired a residence or domicile in any other State; or

''(3) be deemed to have become a resident in or a resident of any other State.

''SEC. 706. BUSINESS OR TRADE OBLIGATIONS.

''(a) AVAILABILITY OF NON-BUSINESS ASSETS TO SATISFY OBLIGATIONS.—If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

''(b) RELIEF TO OBLIGORS.—Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

''SEC. 707. RETURN TO CLASSES AT NO ADDITIONAL COST.

''(a) IN GENERAL.—Each institution of higher education that receives Federal assistance or participates in a program assisted under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) shall permit each student who is enrolled in the institution and enters into military service—

''(1) to return to the institution of higher education after completion of the period of military service; and

''(2) complete, at no additional cost, each class the student was unable to complete as a result of the period of military service.

''(b) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''.

SEC. 2. CONFORMING AMENDMENTS.

(a) MILITARY SELECTIVE SERVICE ACT.—Section 14 of the Military Selective Service Act (50 U.S.C. App. 464) is repealed.

(b) TITLE 5, UNITED STATES CODE.—(1) Section 5520a(k)(2)(A) of title 5, United States Code, is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940'' and inserting ''Servicemembers Civil Relief Act''; and

(2) Section 5569(e) of title 5, United States Code, is amended—

(A) in paragraph (1), by striking ''provided by the Soldiers' and Sailors' Civil Relief Act of 1940'' and all that follows through ''of such Act'' and inserting ''provided by the Servicemembers Civil Relief Act, including the benefits provided by section 702 of such Act but excluding the benefits provided by sections 104 and 106, title IV, and title V (other than sections 501 and 510) of such Act''; and

(B) in paragraph (2), by striking ''person in the military service'' and inserting ''servicemember''.

(c) TITLE 10, UNITED STATES CODE.—Section 1408(b)(1)(D) of title 10, United States Code, is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940'' and inserting ''Servicemembers Civil Relief Act''.

(d) INTERNAL REVENUE CODE.—Section 7654(d)(1) of the Internal Revenue Code of 1986 is amended by striking ''Soldiers' and Sailors' Civil Relief Act'' and inserting ''Servicemembers Civil Relief Act''.

(e) PUBLIC LAW 91–621.—Section 3(a)(3) of Public Law 91–621 (33 U.S.C. 857–3(a)(3)) is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940, as amended'' and inserting ''Servicemembers Civil Relief Act''.

(f) PUBLIC HEALTH SERVICE ACT.—Section 212(e) of the Public Health Service Act (42 U.S.C. 213(e)) is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940'' and inserting ''Servicemembers Civil Relief Act''.

(g) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 8001 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701) is amended by striking ''section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574)'' in the matter preceding paragraph (1) and inserting ''section 511 of the Servicemembers Civil Relief Act''.

SEC. 3. EFFECTIVE DATE.

The amendment made by section 1 shall apply to any case decided after the date of the enactment of this Act.

By Mr. COLEMAN:

S. 1138. A bill to amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage; to the Committee on Health, Education, Labor, and Pensions.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the bill I introduce today to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage be printed in the RECORD.

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

S. 1138

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 ''Help Expand Access to Recovery and Treatment Act of 2003'' or the ''HEART Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Substance abuse, if left untreated, is a medical emergency and a private and public heath crisis.

(2) Nothing in this Act should be construed as prohibiting application of the concept of parity to substance abuse treatment provided by faith-based treatment providers.

SEC. 3. PARITY IN SUBSTANCE ABUSE TREATMENT BENEFITS.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2707. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section:

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical and surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse treatment services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Nonhospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—the term 'substance abuse' includes chemical dependency.

''(f) NOTICE.—a group health plan under this part shall comply with the notice requirement under section 714(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.''.

(B) CONFORMING AMENDMENT.—Section 2723(c) of such Act (42 U.S.C. 300gg—23(c)) is amended by striking ''section 2704'' and inserting ''sections 2704 and 2707''.

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 714. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term small employer

means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section:

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse treatment services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Nonhospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.''.

(B) Section 731(c) of such Act (29 U.S.C. 1191(c)) is amended by striking ''section 711'' and inserting ''sections 711 and 714''.

(C) Section 732(a) of such Act (29 U.S.C. 1191a(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 714''.

(D) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 713 the following new item:

''714. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.''.

(3) INTERNAL REVENUE CODE AMENDMENTS.—(A) Subchapter B of chapter 100 of the Internal Revenue Code of 1986 (relating to other requirements) is amended by adding at the end the following new section:

''SEC. 9813. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan that proves both medical and surgical benefits and substance abuse treatment benefits, the plan shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as a requiring a group health plan to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rule similar to the rules under subsections (b), (c), (m), and (o) of section 414 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan if the application of this section to such plan results in an increase in the cost under the plan of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section:

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan, any day or visit limits imposed on coverage of benefits under the plan during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan, but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse treatment services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.''.

''(B) Section 4980D(d)(1) of such Code is amended by inserting ''(other than a failure attributable to section 9813)'' after ''on any failure''.

''(C) The table of sections of subchapter B of chapter 100 of such Code is amended by adding at the end the following new item:

''9813. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.''.

(b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2752 the following new section:

"SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE BENEFITS.

''(a) IN GENERAL.—The provisions of section 2707 (other than subsection (e)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

''(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 714(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.''.

(2) Section 2762(b)(2) of such Act (42 U.S.C. 300gg-62(b)(2)) is amended by striking ''section 2751'' and inserting ''sections 2751 and 2753''.

(c) EFFECTIVE DATES.—(1) Subject to paragraph (3), the amendments made by subsection (a) apply with respect to group health plans for plan years beginning on or after January 1, 2004.

(2) The amendments made by subsection (b) apply with respect to health insurance covered offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 2004.

(3) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by subsection (a) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 2004.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

(d) COORDINATED REGULATIONS.—Section 104(1) of the Health Insurance Portability and Accountability Act of 1996 is amended by striking ''this subtitle (and the amendments made this subtitle and section 401)'' and inserting ''the provisions of part 7 of the subtitle B of title I of the Employee Retirement Congressional Income Security Act of 1974, and the provisions of parts A and C of title XXVII of the Public Health Service Act, and chapter 100 of the Internal Revenue Code of 1986''.

(e) PREEMPTION.—Nothing in the amendments made by this section shall be construed to preempt any provision of State law that provides protections to individuals that are greater than the protections provided under such amendments.

By Mr. DEWINE (for himself and Mr. LAUTENBERG):

S. 1139. A bill to direct the National Highway Traffic Safety Administration to establish and carry out traffic safety law enforcement and compliance campaigns, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DEWINE. Mr. President, I rise today, along with my colleague from New Jersey, Senator LAUTENBERG, to introduce a bi-partisan bill aimed at reducing the number of vehicle incidents associated with drinking and driving.

Last year, the Nation experienced an increase in alcohol-related traffic fatalities for the third year in a row. This increase resulted in 17,970 deaths or 42 percent of the 42,850 people killed in traffic incidents. Statistics from the National Highway Traffic Safety Administration show that motor vehicle crashes are the leading cause of death for Americans ages 1 to 35 years of age. In fact, on average, 117 people die each day from motor vehicle crashes in the United States.

Our bill—the Traffic Safety Law Enforcement Campaign Act—would require States to conduct a combined media/law enforcement campaign aimed at reducing these traffic fatalities. Specifically, the law enforcement portion consists of sobriety checkpoints in the District of Columbia and in the 39 States that allow them and saturation patrols in those States that do not. The Centers for Disease Control estimate that the sobriety checkpoints proposed in the underlying bill may reduce alcohol related crashes by as much as 20 percent. More than 75 percent of the public has indicated in NHTSA polls support for sobriety checkpoints. In fact, NHTSA has concluded that 62 percent of Americans want sobriety checkpoints to be used more often.

I urge each of my colleagues to join this bi-partisan effort to save lives and promote highway safety.

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. 1139

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 ''Traffic Safety Law Enforcement Campaign Act''.

SEC. 2. TRAFFIC SAFETY LAW ENFORCEMENT CAMPAIGNS.

(a) IN GENERAL.—The Administration of the National Highway Traffic Safety Administration shall establish a program to conduct at least 3 high-visibility traffic safety law enforcement campaigns each year.

(b) FOCUS.—The campaigns shall focus on—

(1) reducing alcohol-impaired driving;

(2) increasing seat belt use; and

(3) a combination of reducing alcohol-impaired driving and increasing seat belt use.

(c) ADVERTISING.—The Administrator may use, or authorize the use of, funds available to carry out this section for the development, production, and use of broadcast and print media advertising in carrying out this section.

(d) EVALUATION AND REPORT.—The Administrator shall evaluate the effectiveness of the campaigns at the end of each year and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 90 days after the end of each year setting forth the findings, conclusions, and recommendations of the Administrator with respect to the program.

SEC. 3. FUNDING.

(a) IN GENERAL.—There are authorized to be appropriated out of the Highway Trust Fund (other than from the Mass Transmit Account) to the Administrator to carry out this Act $150,000,000 for each of fiscal years 2004 through 2009, of which—

(a) $48,000,000 shall be used for each fiscal year for nationwide advertising by the Administration;

(2) $48,000,000 shall be made available each fiscal year by the Administrator to States for advertising;

(3) $48,000,000 shall be made available each fiscal year by the Administrator to States for traffic safety law enforcement; and

(4) $6,000,000 shall be available to the Administrator for evaluation of the program under section 2.

(b) PROGRAM STANDARDS.—Within 120 days after the date of enactment of this Act, the Administrator shall promulgate program standards and criteria for the use of funds under subsection (a)(2) and (3) that will ensure the effective and appropriate use of such funds in accordance with this Act, taking into account State efforts, needs, administrative resources, and priorities.

(c) APPORTIONMENT.—The Administrator shall apportion funds under subsection (a)(2) and (3) among the States on the same basis as funds are apportioned among the States under section 402(c) of title 23, United States Code.

By Mr. LAUTENBERG (for himself, Mr. DEWINE, and Mrs. FEINSTEIN):

S. 1140. A bill to amend titles 23 and 49, United States Code, concerning length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes; to the Committee on Environment and Public Works.

Mr. LAUTENBERG. Mr. President, today, I am proud to introduce, along with my colleagues Senator DEWINE and Senator FEINSTEIN, legislation which will make our roads safer and last longer. Anyone who has ever shared the road with a large tractor trailer truck has wondered whether the truck driver is aware of the smaller vehicles around the truck. Anyone who has seen the third trailer on a triple-trailer truck swinging around like the tail end of a snake knows that these trucks are to be avoided.

The State of New Jersey sees its share of the Nation's truck traffic, but, incidentally, not its share of federal highway dollars. We are concerned about these 53-foot, 80,000-pound vehicles on our highways and the pressure from other states to increase weight and length limitations to allow bigger trucks to come through our State. This

makes truck safety even more important to New Jersey drivers.

Twelve years ago, I got a provision into the highway reauthorization bill we call ''ICE-TEA'' to ban triple-trailer trucks and other so-called ''longer combination vehicles'', LCVs, from New Jersey and most other States. At that time and ever since, the trucking industry has fought to defeat and repeal this ban, under the guise of arguments for ''states' rights'' and ''unfair re-distribution of business to railroads.'' But these are not rational arguments for allowing bigger and heavier trucks as well as triple-trailer trucks on our roads. Additionally, the trucking industry's proclaimed hardships have not materialized. In fact, the trucking companies have survived the current laws quite well, and trucks have refined their role in our national freight transportation system.

Our bill, the ''Safe Highways and Infrastructure Preservation Act, will extend the current limited ban which only applies to our 44,000-mile Interstate Highway System to the entire 156,000-mile National Highway System, NHS. This extension will make more roads safer and will further reduce the wear and tear of our highways and bridges.

Bigger trucks are not safe. The U.S. Department of Transportation has determined that multi-trailer trucks are likely to be involved in more fatal crashes—*11 percent more*—than today's single-trailer trucks. By expanding the limits on triples and other longer combination vehicles to the entire NHS—*including more than 2,000 miles of highway in New Jersey*—the Safe Highways and Infrastructure Protection Act will save lives and prevent further deterioration of our roads and bridges.

Triple-trailers and other LCVs do more damage to our roads and bridges but don't come close to paying associated maintenance and repair costs. The fees, tolls and gasoline taxes paid by the operator of a 100,000-pound truck only covers 40 percent of the cost of the damage that truck does to our roads and bridges. The rest of the taxpayers make up the difference. I believe that motorists should not have to share the road with these dangerous behemoths *and* pay for the extra damage they cause.

I thank my colleagues Senator DEWINE and Senator FEINSTEIN for joining me in sponsoring this important legislation, and I look forward to working with my colleagues in the Congress to improve the highway safety and increase the remaining life of our country's roads and bridges.

By Mr. LAUTENBERG (for himself and Mr. DEWINE):

S. 1141. A bill to amend title 23, United States Code, to increase penalties for individuals who operate motor vehicles while intoxicated or under the influence of alcohol; to the Committee on Environment and Public Works.

Mr. LAUTENBERG. Mr. President, today Senator MIKE DEWINE of Ohio and I are helping to make a big stride in re-arming our country in the war against drunk driving. Together, we have introduced two pieces of legislation which will help reduce the number of civilian casualties in this war by arming our government safety officials with the weapons they need to keep drunk drivers off of our roads.

First, I am proud to be a cosponsor of Senator DEWINE's legislation on improving enforcement of drunk driving laws. There are some good drunk driving laws on the books and they should not be ignored. Since September 11, 2001, much of our country's law enforcement focus has been on ensuring the security of citizens from terrorist attack. This legislation will ensure that efforts to reduce drunk driving are not given short shrift. Almost 18,000 people died last year in alcohol-related motor vehicle traffic crashes, and we must not neglect the safety of our highways. This bill provides needed resources for law enforcement and will deter people from drinking and driving to begin with.

Second, I am proud to introduce, along with Senator DEWINE, legislation targeting higher-risk drivers. This includes repeat offenders and drivers with blood alcohol concentration levels of 0.15 percent or higher. Once these offenders are caught, we need to make sure they don't fall through the cracks in the legal system. These criminals should not be behind the wheel—I believe they are a menace to our society, and we should not tolerate their existence.

I have long been interested in making our roads and highways safer. During my previous tenure, I saw to it that the Federal government took responsibility for reducing the number of fatalities due to drunk driving. I authored laws to increase the minimum drinking age for alcoholic beverages from 18 to 21, and to encourage States to establish .08 percent as the blood alcohol concentration standard for drunk driving nationwide. These laws have made our roads and highways safer and my hope is that they have saved many precious lives.

I feel that the Federal Government needs to take a strong leadership role to reduce alcohol-impaired driving. States cannot deal with these problems in a comprehensive manner. We have passed legislation encouraging states to establish tougher standards for highways safety and drunk driving, but: 32 States still don't have a primary enforcement safety belt law; 11 States still have not adopted the .08 percent Blood Alcohol Content (BAC) standard; 24 States still don't have an open container law; and 27 States still don't have a repeat offender law for drunk driving offenses.

I am particularly disappointed that my home State of New Jersey has not yet adopted the .08 percent BAC standard. At risk are millions of dollars in Federal highway funding that our State desperately needs to repair and improve our roads and bridges. Here in Congress, I fight desperately for this funding. But the State puts this funding at risk rather than make a sensible safety choice and adopt a .08 percent BAC standard. This is why I feel that the Federal Government needs to take a leadership role in setting policies that will save lives by reducing drunk driving.

I feel that States need stronger ''encouragement'' to address these important highway safety issues. We have already tried threatening withholding highway construction funds, but if we allow a loophole for States to recover the funds within 4 years; maybe that still is not enough encouragement.

Now it is time to take the next step in getting drunk drivers off our roads. I look forward to working with Senator DEWINE and the rest of my colleagues in the Senate to reduce the 18,000 alcohol-related traffic fatalities that occur each year. I urge my colleagues to join me and Senator DEWINE in supporting both of these important pieces of legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 153—EXPRESSING THE SENSE OF THE SENATE THAT CHANGES TO ATHLETICS POLICIES ISSUED UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 WOULD CONTRADICT THE SPIRIT OF ATHLETIC EQUALITY AND THE INTENT TO PROHIBIT SEX DISCRIMINATION IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Mrs. MURRAY (for herself, Ms. SNOWE, Mr. DASCHLE, and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 153

Whereas title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), also known as the ''Patsy Takemoto Mink Equal Opportunity in Education Act'' (referred to in this resolution as ''title IX''), prohibits education programs or activities, including athletic programs or activities, that receive Federal financial assistance from discriminating on the basis of sex;

Whereas prior to 1972 and the enactment of title IX, virtually no college offered athletic scholarships to women, fewer than 32,000 women participated in collegiate sports, and women's sports received only 2 percent of college athletic dollars;

Whereas the regulation implementing title IX was submitted to Congress, multiple hearings were held, and the regulation became effective July 21, 1975, with specific provisions governing athletic programs and the awarding of athletic scholarships;

Whereas according to the Department of Education's 1979 Policy Interpretation, which interprets the application of title IX