

amendment No. 1086 proposed to S. 1, a bill to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the Medicare program and to strengthen and improve the Medicare program, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN:

S. 1338. A bill to decrease the matching funds requirement and authorize additional appropriations for Keweenaw National Historical Park in the State of Michigan; to the Committee on Energy and Natural Resources.

Mr. LEVIN. Mr. President, I ask unanimous consent that the text of the Keweenaw National Historical Park bill be printed in the RECORD.

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

S. 1338

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

SECTION 1. FUNDING FOR KEWEENAW NATIONAL HISTORICAL PARK.

(a) MATCHING FUNDS.—Section 8(b) of Public Law 102-543 (16 U.S.C. 410yy-7(b)) is amended by striking “\$4” and inserting “\$1”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 10(a) of Public Law 102-543 (16 U.S.C. 410yy-9(a)) is amended—

(1) by striking “\$25,000,000” and inserting “\$50,000,000”; and

(2) by striking “\$3,000,000” and inserting “\$25,000,000”.

Mr. GRAHAM of Florida. Mr. President, I rise today to introduce legislation that will authorize additional judgeships in the Middle and Southern Federal Judicial Districts of Florida.

Additional judgeships are needed in these two districts in order to deal with a large volume of filings, heavy pending caseloads, the considerable number of senior judges, and a rapidly growing population. It is vital that we add two additional permanent and one temporary judgeship in the Middle District and four additional permanent judgeships in the Southern District of Florida.

Florida’s Middle District is one of the busiest Federal district courts in the Nation. In 2001 it was ranked fifth in the Nation for the number of criminal defendants charged with fraud and drug related offenses among all district courts. It handles cases filed in three of the four largest cities in the State of Florida, Jacksonville, Orlando and Tampa, which comprise 60 percent of the State’s population.

In 1999 four judges were added to the Middle District of Florida. The numbers of weighted filings and pending caseload both decreased in 2000. However, numbers quickly rose again in 2001. A biennial judgeship survey conducted in 2003 showed that in 2001 there were 553 weighted filings in this district versus the national average of 490. In addition, the United States Depart-

ment of Justice has identified Central Florida as a High Intensity Drug Trafficking Enforcement Area.

The Southern and Middle Districts are parallel in some of the challenges that they face. Despite the additional judgeships that were created in the Southern District in 2001, the amount of weighted filings continues to rise. Since 1994, civil and criminal filings per judgeship have stayed above the national average, with civil filings rising by 67 percent and criminal filings increasing by 58 percent. Many of these increases in criminal filings are linked to the increase in fraud, drugs, firearms and immigration prosecutions.

The administration of justice will continue to be a challenge in Florida’s Federal courts unless adequate resources are committed. It is projected that by 2015 Florida may surpass third-ranked New York in population. As the population increases, so do the number of people seeking justice from the Federal courts in our State. I ask that my colleagues join me in supporting this important legislation.

By Mrs. FEINSTEIN:

S. 1342. A bill to amend the Graton Rancheria Restoration Act to give the Secretary of the Interior discretion regarding taking land into trust; to the Committee on Indian Affairs.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce legislation to amend the Graton Rancheria Restoration Act to give the State of California and the local communities of Sonoma, Napa, and Marin counties the opportunity for input and review of the tribe’s plan for a major casino in the Bay Area.

I am offering this legislation because the Boards of Supervisors of the local communities impacted by this planned casino have asked me to amend the Graton Rancheria Restoration Act. The Boards of Supervisors of Sonoma, Marin, and Napa counties have each unanimously passed resolutions seeking a change in Federal law to restore the Secretary of Interior’s discretion in approving land into trust and allowing the State and local government to have a voice in the process.

Prior to today’s introduction I have met with the Presidents of the Sonoma and Marin Boards of Supervisors, the Graton tribe, and Senators CAMPBELL and INOUE the Chairman and Ranking Member of the Indian Affairs Committee.

This week I had a very spirited and frank conversation with Graton Tribal Chairman Greg Sarris and representatives from the casino investors. During the meeting Chairman Sarris committed to work with the local Boards of Supervisors and he committed to look at alternative sites for the casino. Chairman Sarris also said the Tribe and the casino investors would conduct an environmental review based on the criteria laid out in the National Environmental Policy Act, NEPA, before a site is selected. These are positive

signs and I have told both the Boards of Supervisors and the Tribe that I would like to see them continue to work together.

This legislation guarantees that the local and State officials have a voice in the process. Without this change to the Graton Rancheria Restoration Act they do not have that voice.

In 2000, Congress passed the Graton Rancheria Restoration Act to restore Federal recognition to the 355 members of the Federated Indians of the Graton Rancheria.

The Graton Tribe’s original Rancheria was in the northern Sonoma County town of Graton on land purchased by the Bureau of Indian Affairs, BIA, in 1920 for the “village home” of otherwise homeless Miwok and Pomo Indians. The Rancheria was terminated in 1958 when the BIA approved a plan to distribute the assets to resident Indians and remove the Rancheria from Federal trust.

The original version of the Graton restoration bill, H.R. 946, sponsored by Congresswoman LYNN WOOLSEY in the 106th Congress, passed the House of Representatives with a gaming restriction, to which the Tribe agreed.

In testimony before the House Resources Committee in May 2000, and in other public comments, Graton Chairman Greg Sarris stated that the Tribe had no intention of conducting gaming.

In fact, before the House Resources Committee, Chairman Sarris stated, “Many may think our motives for restoration have been influenced by the opportunity gaming affords some other recognized tribes. Because our local political constituency, both democratic and republican has opposed any sort of development for environmental reasons, we agreed with these local political forces to not develop a gaming complex. So, as proof, we voted as a tribe to include a non-gaming clause in our bill, stipulating that we will not be a gaming tribe.”

Furthermore, in an article in the Marin Independent Journal on September 21, 2000, Chairman Sarris said, “All we want is to be formally recognized as Indians and have the same rights that other Indians do for education and health care. We are not interested in gambling.” I ask unanimous consent to print a copy of this article in the RECORD.

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

[From the Marin Independent Journal, Sept. 21, 2000]

GAMBLING DISPUTE THREATENS MIWOK BILL (By Gannet News Service)

WASHINGTON.—Legislation to formally reestablish the identity and standing of Marin’s band of Coast Miwok Indians appears all but dead in the face of a House-Senate dispute over how tight guarantees must be that the tribe will never allow casino gambling.

“This is insane, this is frustrating, and I just can’t see why we can’t find a way out of this,” said Greg Sarris, the tribe’s chief who is an English professor at UCLA.

Rep. Lynn Woolsey, the Petaluma Democrat who authored the original bill, said she shares the frustration but sees little hope other than the fact that "down the road there will be other Congresses."

The problem is that the bill to restore the all-but-vanquished tribe, approved by the full House in June, included specific language that waived in perpetuity any right to establish gaming on the tribe's remaining one-acre ancestral plot in the Sonoma County town of Graton.

Woolsey sought that waiver in agreement with the tiny tribe. In hearings last spring and summer, she and Sarris said the tribe was happy to agree to the waiver. They were not interested in gaming, and their acreage was too small even if they were interested. Additionally, the fine print in a state-passed referendum in California to divide gaming resources among tribes prevents them from operating any kind of casino.

Adding a federal gaming ban on top of an existing state ban was an easy and harmless layer of extra insurance to reassure the community that the tribe would not be bringing high-stakes bingo to Marin.

"All we want is to be formally recognized as Indians and have the same rights that other Indians do for education and health care," said Sarris, one of some 300 descendants of the tribe that the government declared extinct in the 1950s. "We are not interested in gambling."

But when the bill reached the Senate as an identical version of the bill sponsored by Sen. Barbara Boxer, D-Calif., numerous Indian advocates and the government's Bureau of Indian Affairs objected. The surrender of sovereignty by the Miwoks, however well-intentioned, would set a precedent that could be used against other tribes in other states—in effect a means to pressure tribes on the sensitive issue of gambling.

"It's not that we don't have sympathy with what the Miwoks want to do, or in this case don't want to do. It's a question of eroding the hard-won sovereignty that is the legal basis for the gambling that has been an important resource of many tribes," said John Sanchez, an expert on Indian sovereignty at Pennsylvania State University and a member of the Apache tribe.

Boxer's spokesman, David Sandretti, said his bill was still hopeful, but the key lawmaker on the issue is Sen. Daniel Inouye of Hawaii, vice chairman of the Indian Affairs Committee and long a powerful voice on behalf of American Indians and native Hawaiians. Without his support, the bill wouldn't survive in the Senate, Sandretti said.

Inouye made it clear this week that the bill is dead unless Woolsey agreed to drop the gambling ban in her legislation.

"If you set that precedent, that creates a lot of problems," Inouye said. "I would prefer to see a measure without the waiver, and if I do I'd be likely to support it."

Inouye added that it's a meaningless, symbolic waiver to begin with, because the tribe is already prevented from opening a casino by state law. "I just don't think this is something that the federal government should be involved in," he said.

Woolsey said she has no intention of agreeing to anything that doesn't include the anti-gaming clause as written.

"I got it out of the House, and now it's in the Senate, and I guess that's just where it is," Woolsey said. "I've heard some proposals for compromise, but I haven't seen anything that would offer the level of protection against gaming that the community and the 6th Congressional District would be prepared to accept."

Gene Buvelot of Novato, vice chairman of the Federated Indians of Graton Rancheria, said his group is disappointed in Woolsey, be-

cause members believe she should allow the bill to go forward without the clause.

"We're disappointed, deeply disappointed with Woolsey because she seems to be the one who's dropped the ball on this, not Barbara Boxer," he said. "It's a shame that it's getting this far and that Woolsey is letting it bog down like this."

Coast Miwok tribal elder Joanne Campbell, a former Marin resident now living in Daly City, said she often visited her great aunt at the Miwok's Graton Rancheria in Sonoma County.

"I'm really steamed, I'm just so upset that this bill maybe will not pass," Campbell said. "I think it's a just bill and it's about time we got some recognition because we have all these other issues to deal with, Health issues, education issues, and we need this recognition to move forward."

The bill would make the tribe eligible for a wide range of U.S. and California health, education and housing grants and assistance from various federal agencies, give the tribe the right to establish a reservation and exempt the tribe from some local, state, or federal taxes and local zoning ordinances on reservation land.

If the bill is not passed by Oct. 5, when the Senate recesses, a new restoration bill would have to wait until the next Congress.

Campbell described Woolsey's refusal to drop the redundant anti-gaming clause from the reasonable version as "unrelenting" and "unreasonable."

Mrs. FEINSTEIN. Senator BOXER sponsored legislation identical to Congresswoman WOOLSEY'S in the Senate, but the gaming restriction was stricken when the bill was ultimately passed as part of the Omnibus Indian Advancement Act of 2000.

The day the legislation passed on December 11, 2000, Senator BOXER stated on the Senate Floor that dropping the gaming restriction was necessary because of opposition to the no-gaming clause by the Senate Committee on Indian Affairs and the Clinton Administration and because, according to Senator BOXER, "Senator INOUE asserts that the no-gaming clause is unnecessary because the Graton Rancheria have no intention of conducting gaming."

So what has changed one might ask?

Well, even though the Graton voluntarily and repeatedly took a no-gaming pledge while their restoration bill was under consideration by Congress, on April 23, 2003, the Tribe and its partner, Stations Casinos of Las Vegas, announced plans to purchase approximately 2,000 acres of land in Southern Sonoma County near Sears Point for the development of a casino.

This site is located on environmentally sensitive open space and San Francisco—North Bay tidelands which have been the subject of a decades-long conservation effort by environmentalists and local residents.

This site is roughly 30 miles from San Francisco—along the gateway to Sonoma that leads thousands of travelers into the beautiful wine country each day.

The Tribe's casino proposal has outraged local elected officials and residents who had sympathized with the Tribe's plight and supported their restoration on the condition that they not

seek to develop a casino. The Sonoma and Marin County Boards of Supervisors have each passed unanimous resolutions objecting to the Graton casino proposal. In fact, even the Board of Supervisors of neighboring Napa has also passed a resolution against the casino proposal. I ask unanimous consent to print these resolutions and letters from the counties in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

MARIN COUNTY, SAN RAFAEL, CA
AND SONOMA COUNTY, SANTA
ROSE, CA,

May 29, 2003.

Senator DIANNE FEINSTEIN,
U.S. Senate,
San Francisco, CA.

DEAR SENATOR FEINSTEIN: We write this joint letter to request your assistance with an urgent matter facing Marin and Sonoma counties. As you are aware, the Graton Rancheria Tribe has announced plans to acquire lands adjacent to the San Pablo Bay National Wildlife Refuge and to construct a major casino in partnership with Stations Casinos of Las Vegas. The proposal came as a shock to us since, at the time it sought restoration in 2000, the Graton tribe represented to Congress that it would not engage in gaming. It now appears that the Secretary of the Interior believes she must take into trust any land within our counties acquired by the tribe, and that gaming will be permitted on these lands without consultation with local governments or discretionary review by the Secretary.

We ask that you sponsor legislation to require that tribal trust land acquisitions be subject to consultation with local governments and an appropriate administrative review. We ask that restored tribal land acquired for gaming be subject to the two part test that it is not detrimental to the community and is supported by the Governor. Finally, we ask that the Secretary be given discretion with respect to accepting land into trust for the benefit of the Graton tribe. County Counsel from our two counties have prepared a letter to you providing background and supporting details regarding our proposals.

We know that you share our concern about the proliferation of casinos in California, especially those which are close to metropolitan areas or have impacts on sensitive lands.

We look forward to working with you to bring about changes in the law which can advance the economic interests of tribes without harm to the local community.

Very truly yours,

ANNETTE ROSE,
President, Marin
County Board of Super-
visors.

PAUL KELLEY,
Chairman, Sonoma
County Board of Super-
visors.

RESOLUTION NO. 03-0512

Whereas, the agricultural lands and wetlands fronting the San Francisco Bay along Highway 37 constitute one of the most environmentally sensitive regions in the entire Bay Area in light of their proximity to and drainage directly into the Bay;

Whereas, the agricultural lands along Lakeville Highway afford an invaluable agricultural and scenic resource, not only to the people of Sonoma County but to the populace of the entire Bay Area;

Whereas, such lands provide one of the Bay Area's most cherished community separators, and represent an important scenic gateway to Sonoma County;

Whereas, these bay, agriculture and wet lands have been the focus of preservation and conservation efforts by environmentalists and local communities for many years;

Whereas, based upon press reports, approximately 2,000 acres of such lands are presently in imminent danger of being withdrawn from County land use control and placed into trust for the purposes of casino development—including the potential of an extensive gaming complex, including a hotel, parking and other support services as well as possible residential development, by Station Casinos, a Las Vegas-based developer and the Federated Indians of the Graton Rancheria ("Tribe");

Whereas, the Tribe was restored in 2000 based, in part, on its promise not to engage in Indian casino gaming;

Whereas, the federal legislation restoring the Tribe contains language that could be used to circumvent the normally required environmental review and administrative regulatory process for taking land into trust by the United States government on behalf of the Tribe;

Whereas, the Tribe's gaming plans were announced in the media without any government to government consultation with affected local communities;

Whereas, the Board and Tribe have initiated communication regarding the proposed casino but details regarding the project and siting have not yet been made available;

Whereas, the proposed project could overwhelm the local infrastructure in the area in which the casino project is proposed;

Whereas, the environmental impacts of the proposed project have the potential of being as reaching and of such a magnitude that they would negatively affect a significant portion of the North Bay, including grossly aggravating existing traffic problems along State Highways 37 and 101 (as well as County roads in the project vicinity), pose severe water quality risks, and have profound negative visual impacts in the scenic area;

Whereas, when California voters approved Proposition 1A (Indian Gaming) in March of 2000 as a means of supporting the laudable goal of Indian economic development and self-sufficiency, they were not aware that such approval would allow Nevada developers to seize prized off-reservation environmental resources of intense development without regarding to locally approved general plans or any meaningful environmental review or protection;

Whereas, under the provisions of Proposition 1A and the Tribal-State Compact, local communities have been granted no effective input into the development of proposed tribal casinos that threaten their rights and the State appears to have no effective redress for significant environmental impacts these gambling casinos impose on local communities: Now, therefore, be it

Resolved, That the Sonoma County Board of supervisors, based on the information currently available, strongly opposes the creation of a gambling casino on the site proposed by the Tribe; and be it further

Resolved, That County staff is directed to enter into good faith discussions with tribal representatives for the purposes of facilitating government to government communications, exploring casino development and reviewing alternative sites, as well as minimizing and mitigating environmental impacts of any casino project; be it further

Resolved, That County staff is authorized to take all reasonably required action, including submitting comments to agencies involved in considering the trust application

and casino proposal, requesting assistance from State and Federal elected representative, proposing legislation, participating in administrative proceedings, and initiating litigation to insure that any proposed gaming project in Sonoma County complies with the county General Plan and meets all federal and state environmental, public health, and public safety requirements that otherwise would apply to a non-Indian development project, and to require that any land proposed to be taken into trust goes through a thorough regulatory and environmental review process.

RESOLUTION No. 2003-70

Whereas, the agricultural lands and wetlands fronting the San Francisco Bay along Highway 37 constitute one of the most environmentally sensitive regions in the entire Bay Area in light of their proximity to and drainage directly in to the Bay; and

Whereas, the Federated Indians of Graton Rancheria have announced their intention to acquire 2000 acres of land along Highway 37 and develop a casino, hotel, housing and related development on this precious natural resource; and

Whereas, the impact on traffic of a development of this magnitude will be felt throughout the North Bay, with this single development jeopardizing all traffic capacity with local jurisdictions have husbanded for purposes consistent with their respective General Plans; and

Whereas, when Congress passed the Graton Rancheria Restoration Act, the Federated Indians of Graton had pledged not to engage in gaming on any lands placed in trust by the federal government; and

Whereas, the Federated Indians of the Graton Rancheria take the position that under the provisions of the Graton Rancheria Restoration Act, and the tribal state compact, local residents have no effective input into the development of the proposed tribal casino, yet these residents nevertheless bear the resultant environmental, societal, traffic, infrastructure, public safety, and other burdens which these gambling casinos impose on their communities: Now, therefore, be it

Resolved, that the Board of Supervisors of the County of Marin calls on its elected members of the United States Senate, Dianne Feinstein and Barbara Boxer, and its elected member of the House of Representatives, Lynn Woolsey, to assist the residents of Marin and the entire North Bay to preserve their environment by introducing legislation that would amend the Graton Rancheria Restoration Act and/or the Indian Gaming Regulatory Act to stop the unregulated creation of tribal lands and to subject any development of tribal lands in the newly acquired tribal lands by the Indian Gaming Regulatory Act.

RESOLUTION No. 03-94

Whereas, the agricultural lands and wetlands fronting the San Francisco Bay along Highway 37 constitute one of the most environmentally sensitive regions in the entire Bay Area in light of their proximity to and drainage directly into the Bay; and

Whereas, the agricultural lands along Lakeville Highway afford an invaluable agricultural and scenic resource, not only to the people of Sonoma County but also to the populace of the entire Bay Area; and

Whereas, such lands provide one of the Bay Area's most cherished community separators, enjoyed and remembered by all who traverse Highway 37; and

Whereas, these agricultural lands, bay and wetlands have been the focus of preservation and conservation efforts by environmental-

ists and local communities for many years; and

Whereas, such land are presently in imminent danger of intense development—including an enormous casino, a high-rise hotel, an amphitheater, a residential development, and acres of parking—by Station Casinos, a Las Vegas-based developer, and

Whereas, the impact on traffic of a development of this magnitude will be felt throughout the North Bay, with this single development jeopardizing all traffic capacity, which local jurisdictions have husbanded for purposes consistent with their respective General Plans; and

Whereas, when California voters approved Proposition 1A (Indian Gaming) in March 2000 as a means of supporting the laudable goal of Indian economic development and self-sufficiency, they had no way of knowing that such approval would allow Nevada developers to seize our most prized environmental resources for intense development in violation of all local zoning controls and health and safety ordinances; and

Whereas, under the provisions of Proposition 1A and the tribal state compact, local residents have been granted no effective input into the development of proposed tribal casinos that threaten their civil and property rights, yet these residents must nevertheless bear the resultant environmental, societal, traffic, infrastructure, public safety, and other burdens that these gambling casinos impose on their communities: Now, therefore, be it

Resolved, That the Board of Supervisors of the County of Napa strongly oppose the creation of a gambling casino along highway 37 or Lakeville Highway; and be it further

Resolved, That the Board of Supervisors of the County of Napa calls on Governor Davis, the California State Legislature, the U.S. Congress, and the U.S. Department of the Interior to take any and all steps within their powers and prerogatives to block the creation of new tribal land bases that are intended for gambling casinos and other development inconsistent with local zoning and controls and to require that all commercial development on new and existing tribal lands comply with federal, state, and local laws and regulations intended to safeguard the environment and to protect public health and safety.

Mrs. FEINSTEIN. Let me just read one part of the Resolution from Marin County which will give you an idea of the opposition to the Graton tribe's proposed casino:

RESOLVED, that the Board of Supervisors of the County of Marin calls on its elected members of the United States Senate, DIANNE FEINSTEIN and BARBARA BOXER, and its elected member of the House of Representatives, LYNN WOOLSEY, to assist the residents of Marin and the entire North Bay to preserve their environment by introducing legislation that would amend the Graton Rancheria Restoration Act and/or the Indian Gaming Regulatory Act to stop the unregulated creation of tribal lands and to subject development of tribal lands in the Marin and Sonoma Counties at a minimum to the regulatory and approval processes applicable to newly acquired tribal lands by the Indian Gaming Regulatory Act.

While the counties acknowledge that the Graton have a right to be recognized, they object to the site selected by the tribe and they especially object to language in the Restoration Act

that precludes the local community, the Governor, or the Secretary of the Interior from providing input on the suitability of this location for land taken into trust for gaming purposes.

There is a problematic section of the Restoration Act that states, "Upon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County . . ." According to the Department of the Interior, this language removes any discretion by the Secretary as well as any tribal obligations for consultation with the surrounding community or environmental review, as required by the normal process under the Indian Gaming Regulatory Act for newly acquired land taken into trust for gaming purposes.

According to the Department of the Interior, the tribe must only conduct a hazardous materials review and show title to the land for land to be taken into trust. This could be completed in 9 months—and it is an inadequate review in my opinion.

Since the local communities are seeking a remedy which would restore the Secretary's discretion in approving its land trust application and allow local government to provide input in the process, I am introducing this legislation today that will change the "shall take land into trust" to "may take land into trust." This legislation will also require the two-part test that is standard under the Indian Gaming Regulatory Act of 1988 to apply so that the State and local communities have input in the process.

There is precedent for this change. In 1994, legislation was passed restoring the United Auburn Tribe with the same directive to the Secretary of the Interior, requiring that land "shall" be taken into trust for the Tribe. One of the restoration act's sponsors, Congressman JOHN DOOLITTLE sponsored an amendment to change "shall" to "may" after it had been passed, thereby affording the Secretary of Interior discretion in accepting particular parcels of land into trust and local government officials an opportunity to weigh in on the Tribe's proposed site.

The result of that change was that the Auburn Tribe and Placer County officials successfully cooperated in not only identifying a mutually agreeable site, but they signed a Memorandum of Understanding to mitigate potential impacts from the proposed Thunder Valley Casino. And earlier this month, the tribe opened its casino.

Today California is home to 109 federally recognized tribes. 61 tribes have gaming compacts with the State and there are 54 tribal casinos. With more than 50 tribes seeking Federal recognition and approximately 23 recognized tribes seeking gaming compacts from the Governor, revenues from California's tribal gaming industry are expected to surpass Nevada's by the end of the decade.

The dramatic growth in tribal gaming in California has the potential to

yield much needed benefits for tribal members in terms of healthcare, education and general welfare, as Congress and California voters intended. However, the question is not whether gaming should be permitted, but rather how and where. Those questions were asked and answered in the Indian Gaming Regulatory Act of 1988, IGRA. But without the modest change made by this legislation, the Graton tribe will be allowed to develop an off-reservation casino outside the requirements established in IGRA, the first time such an exception has ever been made for a California tribe. Allowing this to happen would set a dangerous precedent not only for California, but every State where tribal gaming is permitted.

The changes we are seeking today are extremely modest. We are not reversing any restoration of the tribe. We are not infringing on Native American sovereignty. We are not even blocking the casino proposal. We are only seeking to give the State and the local communities a voice in the process. They were promised the tribe would not open a casino. That promise was broken, so the least we can do is ensure a normal review will take place.

I hope my colleagues will support this legislation and I look forward to working with the Chairman and Ranking Member of the Indian Affairs Committee to pass this legislation quickly.

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. 1342

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

SECTION 1. AMENDMENT TO GIVE SECRETARY DISCRETION CONCERNING LANDS TAKEN INTO TRUST.

(a) REVIEW.—Section 1404 of the Graton Rancheria Restoration Act (25 U.S.C. 1300n-2) is amended by adding at the end the following new subsection:

"(f) REVIEW.—No land taken into trust for the benefit of the Tribe shall be construed to satisfy the terms for an exception under section 20(b)(1)(B) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)) to the prohibition on gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, under section 20(a) of such Act (25 U.S.C. 2719(a))."

(b) LAND INTO TRUST.—Section 1405(a) of the Graton Rancheria Restoration Act (25 U.S.C. 1300n-3(a)) is amended by striking "shall" and inserting "may".

By Mr. CORZINE (for himself,
Mr. SCHUMER, Mr. AKAKA, and
Mrs. BOXER):

S. 1344. A bill to amend the Electronic Fund Transfer Act to require additional disclosures relating to exchange rates in transfers involving international transactions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, today, along with my distinguished colleagues

Senators SCHUMER, AKAKA, and BOXER, I am introducing "The Money Wire Improvement and Remittance Enhancement Act" (The "Money WIRE Act"), legislation that will protect consumers who send cash remittances through international money wire transmitters by providing them with increased disclosure of the exchange rate and service fees, as well as hidden costs, for those transactions. The legislation also expands access to mainstream money wiring, check cashing, and other important services for millions of the unbanked in America, particularly immigrants, through our Nation's credit unions.

Every year, thirty million Americans send their friends and relatives \$40 billion in cash remittances through wire transfers. The majority of these transfers are remittances sent to their native countries by immigrants to the United States. For these individuals, many of whom are in low-to-minimum wage jobs, sending this money only increases their own personal financial burdens—but they do so to aid their families and their loved ones.

Unfortunately, these immigrants increasingly find themselves being preyed upon by the practices of some money wire transfer providers who not only charge consumers with an upfront charge for the money wire transfer service, but also hit them on the back end with hidden costs. Many of these charges are extracted when the dollars sent by the consumer are converted to the foreign currency value that is supposed to be paid out to the friend of the family member.

This exploitation is especially pervasive in Latin American and Caribbean countries, where much of these types of transactions occur. According to the Multilateral Investment Fund and the Inter-American Development Bank, Latin American and Caribbean immigrants sent a record \$32 billion to their home countries in 2002—a dramatic increase compared with \$23 billion in 2001. Many of these dollars were used to pay for basic needs, such as food, medicine, and schooling, and to alleviate the suffering of loved ones during a difficult economic year.

To bring this amount into even greater perspective, the remittances that flowed into Latin America and the Caribbean last year equaled roughly the amount of direct foreign investment that flowed into the region, and exceeded the amount of development aid to Latin America from all sources. For this decade alone, Latin America and the Caribbean could receive more than \$300 billion. And experts believe that number is likely to grow significantly in coming years.

These large cash flows have proven to be a powerful incentive for greed in the case of some wire transfer companies. Customers wiring money to Latin America and elsewhere in the world lose billions of dollars annually to undisclosed "currency conversion fees," and other service costs.

In fact, many large companies aggressively target immigrant communities, often advertising “low fee” or “no fee” rates for international transfers. But these misleading ads do not always clearly disclose the fees charged when the currency is exchanged.

While large wire service companies typically obtain foreign currencies at bulk rates, they charge a significant currency conversion fee to their U.S. customers. For example, customers wiring money to Mexico are charged an exchange rate that routinely varies from the benchmark by as much as 15 percent. These hidden fees create staggering profits, allowing companies to reap billions of dollars on top of the stated fees they charge for the wire transfer services.

Last year alone, immigrants who sent money to Latin America and the Caribbean paid approximately \$4 billion in transaction costs to the money wire transfer companies that dominate this business. In other words, for every \$100 that an immigrant sent home, to help their family and loved ones, \$12 was siphoned off by these businesses in order to “service” that transaction.

That adds up to a \$20-\$30 average cost, occasionally it can be considerably more, for poor, hard-working folks for whom the typical remittance—around \$250 to \$300 a month—represents a significant percentage of their monthly income.

Multiplied by millions, these excessive charges constitute a significant major economic force. These millions could have otherwise been used to feed children, house a family, or invest in a small business—all of which markedly improve overall quality of life.

The “Money WIRE Act” would require money wire transmitting businesses to disclose to senders, and receivers, of international money wire transfers the exchange rate used in association with the transaction; any surcharges, commissions or fees charged to the customer for the service; and the exact amount of the foreign currency to be received by the recipient in the foreign country.

It also requires that that rate and fee information be prominently displayed at the wire transmitting service location and on all receipts associated with the money wire transaction—and it ensures that those disclosures occur in the same language as that principally used by the business to advertise its money transmitting services, if that language is other than English.

The bill also requires Federal banking regulators and the Department of Treasury to conduct a study, and submit a report to Congress, of the fees and fees disclosure at traditional financial institutions compared to those that occur at money transmitting businesses for money wire transactions.

Finally, the Act includes a provision that expands the “field of membership” definition for credit unions to give non-members, particularly unbanked and

immigrant communities, access to credit unions for international money transfer, money order, and check cashing services, where the costs for these services are significantly less.

This legislation does more than merely provide better information to consumers—it actually helps them and their families financially. Consumers will see increased competition among wire transfer service providers because they are better-informed and more knowledgeable. That competition will result in lower fees for the wire transfer services that will free up a greater portion of these cash remittances to go to the friends and families that they were originally intended for.

In short, this is sound public policy that empowers those who do their part to help America’s economy move forward.

I hope that my colleagues will support this legislation 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. 1344

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 “Money Wire Improvement and Remittance Enhancement Act of 2003” (or the “Money WIRE Act of 2003”).

SEC. 2. DISCLOSURE OF EXCHANGE RATES IN CONNECTION WITH INTERNATIONAL MONEY TRANSFERS.

(a) IN GENERAL.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 918, 919, 920, and 921 as sections 919, 920, 921, and 922, respectively; and

(2) by inserting after section 917 the following new section:

“SEC. 918. DISCLOSURE OF EXCHANGE RATES IN CONNECTION WITH INTERNATIONAL MONEY TRANSFERS.

“(a) DEFINITIONS.—

“(1) INTERNATIONAL MONEY TRANSFER.—The term ‘international money transfer’ means any money transmitting service involving an international transaction which is provided by a financial institution or a money transmitting business.

“(2) MONEY TRANSMITTING SERVICE.—The term ‘money transmitting service’ has the meaning given to such term in section 5330(d)(2) of title 31, United States Code.

“(3) MONEY TRANSMITTING BUSINESS.—The term ‘money transmitting business’ means any business which—

“(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers’ checks, and other similar instruments; and

“(B) is not a depository institution (as defined in section 5313(g) of title 31, United States Code).

“(b) EXCHANGE RATE AND FEES DISCLOSURES REQUIRED.—

“(1) IN GENERAL.—Any financial institution or money transmitting business which initiates an international money transfer on behalf of a consumer (whether or not the consumer maintains an account at such institution or business) shall provide the following disclosures in the manner required under this section:

“(A) The exchange rate used by the financial institution or money transmitting business in connection with such transaction.

“(B) The exchange rate prevailing at a major financial center of the foreign country whose currency is involved in the transaction, as of the close of business on the business day immediately preceding the date of the transaction (or the official exchange rate, if any, of the government or central bank of such foreign country).

“(C) All commissions and fees charged by the financial institution or money transmitting business in connection with such transaction.

“(D) The exact amount of foreign currency to be received by the recipient in the foreign country, which shall be disclosed to the consumer before the transaction is consummated and printed on the receipt referred to in paragraph (3).

“(2) PROMINENT DISCLOSURE INSIDE AND OUTSIDE THE PLACE OF BUSINESS WHERE AN INTERNATIONAL MONEY TRANSFER IS INITIATED.—The information required to be disclosed under subparagraphs (A), (B), and (C) of paragraph (1) shall be prominently displayed on the premises of the financial institution or money transmitting business both at the interior location to which the public is admitted for purposes of initiating an international money transfer and on the exterior of any such premises.

“(3) PROMINENT DISCLOSURE IN ALL RECEIPTS AND FORMS USED IN THE PLACE OF BUSINESS WHERE AN INTERNATIONAL MONEY TRANSFER IS INITIATED.—The information required to be disclosed under paragraph (1) shall be prominently displayed on all forms and receipts used by the financial institution or money transmitting business when initiating an international money transfer in such premises.

“(c) ADVERTISEMENTS IN PRINT, BROADCAST, AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING.—The information required to be disclosed under subparagraphs (A) and (C) of subsection (b)(1) shall be included—

“(1) in any advertisement, announcements, or solicitation which is mailed by the financial institution or money transmitting business and pertains to international money transfer; or

“(2) in any print, broadcast, or electronic medium or outdoor advertising display not on the premises of the financial institution or money transmitting business and pertaining to international money transfer.

“(d) DISCLOSURES IN LANGUAGES OTHER THAN ENGLISH.—The disclosures required under this section shall be in English and in the same language as that principally used by the financial institution or money transmitting business, or any of its agents, to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

SEC. 3. STUDY ON FEE DISCLOSURES FOR MONEY WIRE TRANSMISSIONS.

(a) STUDY.—The Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and the Secretary of the Treasury shall jointly conduct a study on fees charged and fee disclosures for money wire transmissions.

(b) COMPARISON OF PRICES.—The study required by subsection (a) shall compare the disclosures provided by federally insured depository institutions for money wire transmissions with disclosures provided by money transmitting businesses (as defined in section 5330(d)(1) of title 31, United States Code) for such transmissions.

(c) REPORT REQUIRED.—The Federal banking agencies and the Secretary of the Treasury shall jointly submit a report on the study required under subsection (a) to the Congress before the end of the 1-year period beginning on the date of enactment of this Act.

SEC. 4. FEDERAL CREDIT UNION ACT AMENDMENT.

Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)) is amended to read as follows:

“(12) in accordance with regulations prescribed by the Board—

“(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments; and

“(B) to cash checks and money orders for persons in the field of membership for a fee;”.

Mr. AKAKA. Mr. President, I rise as a cosponsor of the Money Wire Improvement and Remittance Enhancement Act introduced by my colleague, Senator CORZINE. I thank Senator CORZINE for his leadership on this issue.

Immigrants often send a portion of their hard-earned wages to their relatives abroad. Remittances are often used to improve the standard of living of recipients by increasing access to health care, education, and essentials of daily life. In addition, remittances contribute significantly to the economic development of nations. For example, Philippines workers across the globe sent an estimated \$6.4 billion back to the Philippines in 2001.

Despite the tremendous importance of remittances, people who send them are often unaware of the fees and exchange rates assessed in these transactions which reduce the amount of money received by their family members. Fees for sending remittances often can be ten to twenty percent of the value of the transaction. Also, the exchange rate used in the transaction can be significantly lower than the market rate.

Consumers and their families cannot afford to remain uninformed about their financial service options and the fees placed on their transactions. This legislation would ensure that each customer is fully informed of all of the fees and the exchange rates used in sending money.

I am hopeful that the enactment of this legislation will result in more people utilizing banks and credit unions for remittances because these institutions do not charge the exorbitant fees often associated with remittances processed by certain other entities. In addition, if unbanked immigrants take advantage of the remittance services offered by banks and credit unions, they will be more likely to open up an account. This would allow immigrants to take advantage of the opportunities for saving and borrowing found at mainstream financial institutions and offer them alternatives to fringe banking products, such as check cashing services.

The Money Wire Improvement and Remittance Enhancement Act has spe-

cial significance to my home State of Hawaii. Hawaii is home to significant numbers of recent immigrants from many nations, including the Philippines, who send remittances to their relatives abroad. We must do what we can to ensure that their hard-earned dollars are not eroded by unnecessary fees or a lack of transparency regarding exchange rates.

I encourage my colleagues to support this much-needed legislation.

By Mrs. MURRAY (for herself, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Mr. SCHUMER, and Mr. HOLLINGS):

S. 1345. A bill to extend the authorization for the ferry boat discretionary program, and for other purposes; to the Committee on Environment and Public Works.

Mrs. MURRAY. Mr. President, I rise today to introduce legislation that will greatly enhance Federal participation in financing and improving our Nation's ferry transportation system.

Today I am introducing the Ferry Transportation Enhancement Act. I am proud to have Senators BOXER, CANTWELL, CORZINE, CLINTON, EDWARDS, FEINSTEIN, HOLLINGS, KENNEDY, LAUTENBERG, and SCHUMER as original cosponsors. This bill will provide significantly more resources to state governments, public ferry systems, and public entities responsible for developing facilities for ferries.

Specifically, the bill would: provide \$150 million a year for the Federal Highway Administration's Ferry Boat Discretionary Program for fiscal years 2004 through 2009. This is approximately four times the \$38 million a year that is currently being provided under this program; add “ferry maintenance facilities” to the list of allowable use of funds under this program; add “ferries” to the Clean Fuels Program; establish a Ferry Joint Program Office to coordinate Federal programs affecting ferry boat and ferry facility construction, maintenance, and operations and to promote ferry service as a component of the Nation's transportation system; establish an information database on ferry systems, routes, vessels, passengers and vehicles carried; and establish an institute for ferries to conduct R&D, conduct training programs, encourage collaborative efforts to promote ferry service, and preserve historical information. This will parallel institutes that now exist for highways, transit, and rail.

Currently, the Federal investment in ferries is only one-tenth of one percent of the total Surface Transportation Program. There is virtually no coordination at the Federal level to encourage and promote ferries as there are for other modes of transportation.

We need better coordinated ferry services because it's the sole means of surface transportation in many areas of the country, including Hawaii, Alaska and my home State of Washington.

Ferries are also the preferred, and the only feasible, method of commuting from home to work in places like Washington State, New York/New Jersey, North Carolina, Hawaii and Alaska.

Finally, in many States—like my home State of Washington—they are an important part of the tourism industry and represent a part of our cultural identity.

The symbol of ferries moving people and vehicles on the waterways of the Puget Sound is as much a part of our cultural identity as computers, coffee, commercial aircraft and the Washington Apple.

Ferry use is growing.

In Washington State our ferry system—the Nation's largest—currently transports 26 million passengers each year and carries 11 million vehicles.

Other systems that serve New York/New Jersey, North Carolina, San Francisco, and Alaska also have significant numbers of passengers using the ferries.

The Nation's six largest ferry systems carried 73 million people and 13 million vehicles last year.

The growth projection for ferry use is very high. For these larger systems, it is projected that by 2009 there will be a 14-percent increase in passengers and a 17-percent increase in vehicles being carried by ferries compared to 2002.

In San Francisco, that projection is a 46-percent increase.

It is clear that many people are using ferries and more will be using them in the future.

This is all with very little help from the Federal Government.

Our investment in ferries pails in comparison to the Federal investments in highways and other forms of mass transit.

Our bill would provide the needed funding for these growing systems for new ferry boat construction, for ferry facilities and terminals, and for maintenance facilities.

The bill also would make ferries eligible under the Clean Fuels Program.

Like busses, ferries are a form of mass transit that is environmentally cleaner than mass use of cars and trucks. Making them eligible for the Clean Fuels Program will encourage boat makers to design cleaner and more efficient vessels in the future. This will make ferry travel an even more environmentally friendly means of transportation than it already is today.

Finally, setting up a Ferry Joint Program Office, keeping track of ferry statistics, and establishing a National Ferry Institute will increase the profile of ferries as part of our Nation's infrastructure and provide a method to analyze and research ways to improve their use.

In the end, I hope this proposal can be included in the TEA-21 Reauthorization.

Ferries are an important part of our Nation's transportation infrastructure.

This bill recognizes their importance by providing the resources and support they need to grow and serve passengers.

I urge the Senate support this bill, and I look forward to working with my colleagues to see it passed.

By Ms. CANTWELL (for herself and Ms. COLLINS):

S. 1346. A bill to amend the Workforce Investment Act of 1998 to provide for strategic sectoral skills gap assessments, strategic skills gap action plans, and strategic training capacity enhancement seed grants, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. CANTWELL:

S. 1347. A bill to amend the Workforce Investment Act of 1998 to provide for training service and delivery innovation projects; to the Committee on Health, Education, Labor, and Pensions.

By Ms. CANTWELL:

S. 1348. A bill to amend the Higher Education Act of 1965 to modify the computation of eligibility for certain Federal Pell Grants, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. CANTWELL. Mr. President, I come to the floor today to discuss a topic that I believe is critical to our Nation's economic growth and future competitiveness—the training of our workforce.

We are living in tough economic times. The economy of the State of Washington and the Nation at large are suffering through a recession where jobs are scarce and workers are scrambling to pay the bills. The most recent employment data available from the Bureau of Labor Statistics have offered little comfort in Washington where the unemployment rate is 7.3 percent. Washington, along with the other Pacific Northwest States of Oregon and Alaska, continues to have among the highest unemployment rates in the nation.

Just a month ago, the Senate moved quickly to extend the temporary extension of unemployment compensation program, so that approximately four million workers across this country will not lose their Federal extended unemployment benefits. I am proud that the Senate acted quickly to extend this important program. This means that over 100,000 unemployed workers in Washington State will receive 26 weeks of Federal extended benefits. I am disappointed, however, that we were not able to pass coverage for the estimated 1.1 million unemployed workers who have entirely exhausted their State and Federal benefits. Therefore, I am fighting to pass a bill that would extend coverage to the long-term unemployed, so that help is available to the hardest hit workers in this weak economy.

Nonetheless, our efforts should not stop with an unemployment insurance

extension. We must continue to pursue long-term strategies for a sustained economic recovery. The fundamental strength of our economy lies in the working men and women of this Nation whose innovation and hard work propelled the massive economic expansion of the past decade.

The competitive edge that will keep our workers ahead in this changing global economy is their skills. Our economy is global, linked by international markets and communications networks. The sustained success of U.S. companies depends on adaptability and innovation, which means that workers themselves need to remain flexible and continually update job skills.

Even in this time of high unemployment, businesses throughout the country cannot find workers with the skills they need. According to a study completed by Heldrich Work Trends Survey, American employers are finding it difficult to hire qualified workers. Nearly half, 46 percent, of American businesses say they have had trouble finding workers with the necessary skills. At the same time, over three million workers are laid off each year, but well under 500,000 receive any sort of training to learn the skills demanded by those businesses that face worker shortages. Job training is an answer to meeting those skill demands and bridging the skills gaps that persist. However, it will not occur widely without a strong financial commitment from the Federal Government to ensure access to job training programs, and ongoing efforts to maximize the effectiveness of those funds that we already invest.

Investment in job training must be our first priority not our last—the decisions we make today to invest in our workers will pay off many times over in the form of stronger local economies, healthier communities, and improved quality of life.

But the reality is that we are delivering a trickle of funding while faced with a tidal wave of need. I have traveled across my state, from Olympia to Kelso, Vancouver to Bellingham, the Tri-cities to Spokane and received a great deal of feedback from Washingtonians who are seeking training, are providing it, or are serving as employers who need to hire skilled workers. And I heard similar concerns repeated in each of these areas: first, as our economy continues to evolve, the demand for new skills has grown; second, the enormous increase in demand for skills training by individual workers who are upgrading skills or changing jobs is a trend that appears to be widespread throughout the Nation; but third, far too many of those workers seeking access to training cannot get the training they need due to limited space at training institutions and the limited tuition assistance.

Last year, my office released a study of this apparent shortfall in capacity of training systems in my State, and the

results of that study were staggering to me. There are over 110,000 dislocated workers in my state, the majority of whom want to upgrade their skills but cannot do so because of budgetary limitations that prevent institutions from offering enough courses, and the limited numbers of available training vouchers.

To make things worse, this year, the State of Washington received approximately 40 percent less in Workforce Investment Act, WIA, formula funding compared to last year. This drastic cut in WIA funding means that services will be cut back at a time when the demand is at an all time high. It is imperative that during this time of State deficits, States receive additional help from the Federal Government for important services such as education and job training.

As my colleagues know, the Workforce Investment Act is up for reauthorization this year. The WIA system is clearly the centerpiece of the Federal job training programs. It provides a one-stop delivery system designed to meet a broad range of worker needs, and it emerged from years of bipartisan work by Congress to consolidate over 33 Federal programs into one system for delivering employment and training services.

Today, I am introducing three bills that are designed to build upon the existing workforce structure to expand opportunities for training and improve its effectiveness.

The first piece of legislation would change the Pell Grant program to make certain that student financial aid is available to recently laid off workers. Under current law, the standard practice in the determination of Pell Grant eligibility for student aid is to base grant awards upon the applicant's income during the previous year. The use of tax forms for this purpose, in many cases, is the most appropriate and easiest administrative method of obtaining a clear and official statement of financial need. But, as a result, many recently laid-off workers are not eligible for critical financial assistance at a time when the workers' families are experiencing a dramatic decrease in income. My legislation would explicitly provide the authority for educational institutions, after taking sufficient precautions to prevent fraud, to consider current-year income levels for applicants seeking training through Pell Grant-eligible programs. It does this in a very narrow way, by only allowing institutions in States with high unemployment rates to consider current year financial circumstances rather than previous year income.

The second bill addresses issues of distance-learning and delivery of training to hard to reach areas in a comprehensive manner. While many distance-learning technologies have been developed in recent years, those technologies have not necessarily reached many of those who are most in need of training. Many workers in need of

training may not be aware of online distance learning opportunities and may not be able to take advantage of them even if they do know about them. I believe, it is not enough to create a distance learning curriculum and passively provide it through an educational institution website. Rather, comprehensive solutions need to be developed that integrate curriculum innovations, technological access, and the promotion and linkage of workers in need of training with such opportunities, especially to help workers in rural areas. That's why my bill encourages the local workforce development boards to plan a comprehensive approach to improve access to and delivery of employment training services by using technology and online resources to connect workers with the information and tools they need to upgrade their skills.

The third bill that I am introducing today is designed to help local workforce development boards better understand regional labor market dynamics and improve system performance by identifying emerging sectors and industries with chronic worker shortages. My legislation encourages local workforce development boards to target employment and training resources so that workers can get training in occupations where employers need workers.

My legislation provides new resources to the state level so that states can direct funding down to the local workforce development boards to form partnerships with employers, unions, service providers and other key players in order to develop a strategic plan for addressing regional industry and workforce needs.

I want to make clear that this legislation is not intended to reinvent the wheel for areas that are already developing sectoral approaches within existing workforce development systems. In fact, Washington State is a leader in sector approaches: in 2000, the Washington State Legislature enacted legislation to support industry skills panels known as the "Skills Initiative." The Skills Initiative provides grants to local workforce development councils to engage business and industry in strategies to close the skill gaps in my State. My legislation emphasizes this work by providing funding to support these partnerships.

This is a first step on a long journey as we work to improve Federal job training systems, and it is critical, now more than ever, that Congress increase funding for the job training programs under the Workforce Investment Act. By providing the necessary resources, we send a strong message to the American public that our government must invest in our greatest resource—the American worker. Each of these bills is an important component of that broader strategy, and I look forward to working with my colleagues as we begin to look at the reauthorization of WIA and the Higher Education Act this year and next.

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

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1346

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 "Sectoral Market Assessment for Regional Training Enhancement and Revitalization Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) More than ⅓ of the Nation's current workforce lacks the basic skills necessary to succeed in today's labor market.

(2) Globalization of the economy is leading to losses of jobs in key domestic industries, as well as challenges to competitiveness and productivity in other domestic industries.

(3) To remain economically vital and competitive, the Nation must invest in generating jobs and train a workforce skilled enough to contribute productively to the United States economy.

(4) Strategic planning that links workforce development and economic development, and the targeting of resources to industries that can build strong regional economies and create jobs with living wages for workers, need to be priorities for the workforce investment system.

(5) States and local workforce investment boards can play lead roles in guiding a more strategic process for achieving economic growth through workforce development.

SEC. 3. SKILLS GAP CAPACITY ENHANCEMENT GRANTS.

Subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.) is amended—

(1) by redesignating section 137 as section 138; and

(2) by inserting after section 136 the following:

"SEC. 137. SKILLS GAP CAPACITY ENHANCEMENT GRANTS.

"(a) PURPOSES.—The purposes of this section are—

"(1) to assist States and local boards in better focusing funds provided under this subtitle on activities and programs that address labor shortages and meet the emerging demand for skills in high-quality jobs in area industries;

"(2) to enhance the efficiency of the one-stop delivery systems and providers of training services;

"(3) to establish and improve partnerships between local boards, industry sectors, economic development agencies, providers of training services (including secondary schools, postsecondary educational institutions, community-based organizations, business associations, and providers of joint labor-management programs), providers of supportive services, and other related public and private entities;

"(4) to strengthen integration of workforce development strategies and economic development strategies in States, local areas, and labor markets;

"(5) to retain vital industries in the local areas and regions involved, avoid dislocation of workers, and strengthen the competitiveness of key industries; and

"(6) to encourage the development of career ladders and advancement efforts in local industries.

"(b) DEFINITIONS.—In this section:

"(1) CONSORTIUM.—The term 'consortium' means a consortium of local boards, established as described in subsection (d)(3).

"(2) REGION.—The term 'region' means 2 or more local areas that comprise a common labor market for an industry sector or group of related occupations.

"(3) TRAINING SERVICES.—The term 'training services' means services described in section 134(d)(4).

"(c) GRANTS TO STATES.—

"(1) IN GENERAL.—The Secretary shall make grants to States, to enable the States to assist local boards and consortia in carrying out the activities described in subsection (e).

"(2) FORMULA.—

"(A) IN GENERAL.—The Secretary shall make the grants in accordance with the formula used to make grants to States under section 132(b)(1)(B) (other than clause (iv)), subject to subparagraph (B).

"(B) SMALL STATE MINIMUM ALLOTMENT.—The Secretary shall ensure that no State shall receive an allotment under this paragraph for a fiscal year that is less than ½ of 1 percent of the funds made available to carry out this section for that fiscal year.

"(d) GRANTS TO LOCAL BOARDS.—

"(1) IN GENERAL.—A State that receives a grant under subsection (c)—

"(A) shall use the funds made available through the grant to make grants to local boards and consortia to carry out the activities described in subsection (e); and

"(B) may use not more than 15 percent of the funds made available through the grant, at the election of the State, to prepare strategic sectoral skills gap assessments, as described in subsection (e)(2), in the local areas or regions involved, or to provide technical assistance to local boards, consortia, or partnerships described in subsection (e)(3).

"(2) CONSIDERATION.—In making the grants, the State may take into account the size of the workforce in each local area or region.

"(3) CONSORTIA.—States shall encourage local boards to aggregate, to the maximum extent practicable, into consortia representing regions, for purposes of carrying out activities described in subsection (e). Nothing in this paragraph shall be construed to require local boards to aggregate into such consortia.

"(4) APPLICATIONS.—To be eligible to receive a grant under this section, a local board or consortium shall submit an application to the State, at such time and in such manner as the State may require, containing—

"(A) information identifying the members of the partnership described in subsection (e)(3) that will carry out the activities described in subsection (e); and

"(B) an assurance that the board or consortium will use, or ensure that the partnership uses, the funds to carry out the activities described in subsection (e).

"(e) USE OF FUNDS.—

"(1) IN GENERAL.—A local board or consortium that receives a grant under this section—

"(A) shall ensure that the partnership described in paragraph (3) uses the funds made available through the grant to—

"(i) prepare a strategic sectoral skills gap assessment, as described in paragraph (2), unless the State elects to prepare the assessment;

"(ii) develop a strategic skills gap action plan, as described in paragraph (4); and

"(iii) provide strategic training capacity enhancement seed grants to providers of training services specified in subsection (a)(3), one-stop operators, and other appropriate intermediaries, as described in paragraph (5); and

"(B) may use funds made available through the grant to ensure that activities carried

out under this subtitle are carried out in accordance with the strategic skills gap action plan.

“(2) STRATEGIC SECTORAL SKILLS GAP ASSESSMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (E), the local board or consortium (or, at the election of the State, that State) shall prepare a strategic sectoral skills gap assessment, which shall—

“(i) identify areas of current and expected demand for labor and skills in a specific industry sector or group of related occupations that is—

“(I) producing high-quality jobs in the local area or region involved;

“(II) developing emerging jobs in that area or region; or

“(III) suffering chronic worker shortages;

“(ii) identify the current and expected supply of labor and skills in that sector or group in the local area or region; and

“(iii) identify gaps between the current and expected demand and supply of labor and skills in that sector or group in the local area or region.

“(B) SPECIFIC CONTENTS.—The assessment shall contain data regarding—

“(i)(I) specific high-quality employment opportunities offered by industries in the local area or region; and

“(II) specific skills desired for such opportunities;

“(ii)(I) occupations and positions in the local area or region that are difficult to fill; and

“(II) specific skills desired for such occupations and positions;

“(iii)(I) areas of growth and decline among industries and occupations in the local area or region; and

“(II) specific skills desired for such growth areas; and

“(iv) specific inventories of skills of unemployed or underemployed individuals in the local area or region.

“(C) INFORMATION.—The assessment shall contain current (as of the date of preparation of the assessment) information including specific information from multiple employers in the sector or group described in subparagraph (A)(i), labor organizations, and others connected to the businesses and workers in that sector or group, to illuminate local needs of both employers and workers. To the maximum extent possible, the information shall be regularly updated information.

“(D) SURVEY.—The assessment shall contain the results of a survey or focus group interviews of employers and labor organizations and other relevant individuals and organizations in the local area or region.

“(E) EXCEPTION.—

“(i) STATE.—A State shall not be required to use the funds made available through a grant received under this section, to prepare an assessment described in this paragraph.

“(ii) LOCAL BOARD OR CONSORTIUM.—A local board or consortium shall not be required to use the funds made available through a grant received under this section, to prepare an assessment described in this paragraph, if the local board or consortium demonstrates that, within the 2 years prior to receiving the grant, an assessment that meets the requirements of this paragraph has been prepared for the local area or region involved.

“(3) SKILLS PARTNERSHIP.—In carrying out this section, local boards and consortia shall enter into partnerships that include—

“(A) representatives of the local boards for the local area or region involved;

“(B) representatives of multiple employers for a specific industry sector or group of related occupations, and related sectors or occupations, identified through the assessment described in paragraph (2) as having identi-

fied gaps between the current and expected demand and supply of labor and skills in the industry sector or group of related occupations in the local area or region involved;

“(C) representatives of economic development agencies for the local area or region;

“(D) representatives of providers of training services described in subsection (a)(3) in the local area or region;

“(E) representatives nominated by State labor federations or local labor federations; and

“(F) other entities that can provide needed supportive services tailored to the needs of workers in the sector or group.

“(4) STRATEGIC SKILLS GAP ACTION PLAN.—The partnership shall develop a strategic skills gap action plan, based on the assessment, that—

“(A)(i) identifies specific barriers to adequate supply of labor and skills in demand in a specific industry sector or group of related occupations that is producing high-quality jobs in the local area or region involved; and

“(ii) identifies activities (which may include the provision of needed supportive services) that will remove or alleviate the barriers described in clause (i) that could be undertaken by one-stop operators and providers of training services described in subsection (a)(3);

“(B) specifies how the local board (or consortium) and economic development agencies in the partnership will integrate the board's or consortium's workforce development strategies with local or regional economic development strategies in that sector or group; and

“(C) identifies resources and strategies that will be used in the local area or region to address the skill gaps for both unemployed and incumbent workers in that sector or group.

“(5) STRATEGIC TRAINING CAPACITY ENHANCEMENT SEED GRANTS.—

“(A) IN GENERAL.—The local board or consortium, after consultation with the partnership, shall make grants to providers of training services described in subsection (a)(3), one-stop operators, and other appropriate intermediaries to pay for the Federal share of the cost of—

“(i) developing curricula to meet needs identified in the assessment described in paragraph (2) and to overcome barriers identified in the plan described in paragraph (4);

“(ii) modifying the programs of training services offered by the providers in order to meet those needs and overcome those barriers;

“(iii) operating pilot training efforts that demonstrate new curricula, or modifications to curricula, described in clause (i);

“(iv) expanding capacity of providers of training services in sectors or groups described in paragraph (2)(A)(i);

“(v) reorganizing service delivery systems to better serve the needs of employers and workers in the sectors or groups; or

“(vi) developing business services to ensure retention and greater competitiveness of the sectors or groups.

“(B) FEDERAL SHARE.—

“(i) IN GENERAL.—The Federal share of the cost described in subparagraph (A) shall be 75 percent.

“(ii) NON-FEDERAL SHARE.—The non-Federal share of the cost may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.”

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Section 138 of the Workforce Investment Act of 1998 (29 U.S.C. 2872), as redesignated by section 3(1), is amended by adding at the end the following:

“(d) SKILLS GAP CAPACITY ENHANCEMENT GRANTS.—In addition to any amounts au-

thorized to be appropriated under subsection (a), (b), or (c), there are authorized to be appropriated to carry out section 137 such sums as may be necessary for fiscal years 2004 through 2007.”

SEC. 5. CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in section 1(b) of the Workforce Investment Act of 1998 is amended by striking the item relating to section 137 and inserting the following:

“Sec. 137. Skills gap capacity enhancement grants.

“Sec. 138. Authorization of appropriations.”.

(b) REFERENCES TO AUTHORIZATION OF APPROPRIATIONS.—

(1) YOUTH ACTIVITIES.—Subsections (a) and (b)(1) of section 127 of the Workforce Investment Act of 1998 (29 U.S.C. 2852) are amended by striking “section 137(a)” each place it appears and inserting “section 138(a)”.

(2) ADULT EMPLOYMENT AND TRAINING ACTIVITIES.—Section 132(a)(1) of the Workforce Investment Act of 1998 (29 U.S.C. 2862(a)(1)) is amended by striking “section 137(b)” and inserting “section 138(b)”.

(3) DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.—Subsections (a)(2) and (b)(2)(A)(i) of section 132 of the Workforce Investment Act of 1998 (29 U.S.C. 2862) are amended by striking “section 137(c)” each place it appears and inserting “section 138(c)”.

S. 1347

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

SECTION 1. TRAINING SERVICE AND DELIVERY INNOVATION PROJECTS.

Section 171(b)(1)(D) of the Workforce Investment Act of 1998 (29 U.S.C. 2916(b)(1)(D)) is amended to read as follows:

“(D) targeted innovation projects that improve access to and delivery of employment and training services, with emphasis given to projects that incorporate advanced technologies to facilitate the connection of individuals to the information and tools they need to upgrade skills, including projects that link individuals in need of training to opportunities for self-guided learning, and with priority given to projects that—

“(i) actively promote sources of information about training opportunities and training content by providing technology directly to eligible training recipients;

“(ii) provide for the conduct of online eligibility determinations for Federal and State training programs, and direct individuals to the appropriate programs in the area; and

“(iii) integrate high-quality employment and training services information with the delivery of information regarding other social services and health care programs;”.

S. 1348

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Pell Grant Eligibility Clarification Act of 2003”.

SEC. 2. CONSIDERATION OF CURRENT YEAR CIRCUMSTANCES.

Section 480(a) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(a)) is amended—

(1) in paragraph (1), by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”; and

(2) by adding at the end the following:

“(3) CONSIDERATION OF CURRENT YEAR CIRCUMSTANCES FOR CERTAIN PELL GRANT AWARDS.—

“(A) IN GENERAL.—If a student is a resident of a State that is in an extended benefit period (within the meaning of section 203 of the

Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147)), then for purposes of calculating total income under paragraph (1) for a student seeking assistance under subpart 1 of part A, the Secretary shall reduce the student's total income by an amount by which—

“(i) the adjusted gross income plus untaxed income and benefits for the preceding tax year minus excludable income (as defined in subsection (e)), exceeds

“(ii) the projected gross income plus untaxed income and benefits for the current tax year minus the projected excludable income (as defined in subsection (e)).

“(B) ANTI-FRAUD PROCEDURES.—The Secretary shall establish procedures to ensure that computations made pursuant to subparagraph (A) are not fraudulent.”.

By Mr. SMITH (for himself, Mr. KOHL, Mrs. BOXER, Mr. CORNYN, Mr. FEINGOLD, Mrs. HUTCHISON, Ms. MURKOWSKI, and Mr. WYDEN):

S. 1349. A bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing, and for other purposes; to the Committee on Finance.

Mr. SMITH. Mr. President, on behalf of myself and my colleagues, Mr. KOHL of Wisconsin, Mrs. BOXER of California, Mr. CORNYN of Texas, Mr. FEINGOLD of Wisconsin, Mrs. HUTCHISON of Texas, Ms. MURKOWSKI of Alaska, and Mr. WYDEN of Oregon, I ask unanimous consent that the text of the bill, the “Veterans American Dream Home Ownership Act” be printed in the RECORD.

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

S. 1349

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

SECTION 1. ALL VETERANS ELIGIBLE FOR STATE HOME LOAN PROGRAMS FUNDED BY QUALIFIED VETERANS' MORTGAGE BONDS.

(a) IN GENERAL.—Section 143(1)(4) of the Internal Revenue Code of 1986 (defining qualified veteran) is amended—

(1) by striking “at some time before January 1, 1977” in subparagraph (A), and

(2) by striking subparagraph (B) and inserting the following:

“(B) who applied for the financing before the date 30 years after the last on which such veteran left active service.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to financing provided and mortgage credit certificates issued after June 30, 2003.

SEC. 2. REVISION OF STATE VETERANS LIMIT.

(a) IN GENERAL.—Subparagraph (B) of section 143(1)(3) of the Internal Revenue Code of 1986 (relating to volume limitation) is amended to read as follows:

“(B) STATE VETERANS LIMIT.—A State veterans limit for any calendar year is the amount equal to—

“(i) \$425,000,000 for the State of Texas,
“(ii) \$537,000,000 for the State of California,
“(iii) \$200,000,000 for the State of Oregon,
“(iv) \$200,000,000 for the State of Wisconsin,
and

“(v) \$200,000,000 for the State of Alaska.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after December 31, 2003.

SEC. 3. ELECTIVE CARRYFORWARD OF UNUSED LIMITATION.

(a) IN GENERAL.—Section 143(1)(3) of the Internal Revenue Code of 1986 (relating to volume limitation) is amended by adding at the end the following:

“(D) ELECTIVE CARRYFORWARD OF UNUSED LIMITATION.—

“(i) IN GENERAL.—If—

“(I) a State veterans limit for any calendar year after 2002, exceeds

“(II) the aggregate amount of qualified veterans' mortgage bonds issued by such State,

such State may irrevocably elect to treat such excess as a carryforward for qualified veterans' mortgage bonds.

“(ii) USE OF CARRYFORWARD.—

“(I) IN GENERAL.—If a State elects a carryforward under clause (i), qualified veterans' mortgage bonds issued during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under subparagraph (A) to the extent the amount of such bonds does not exceed the amount of the carryforward so elected.

“(II) ORDER IN WHICH CARRYFORWARD USED.—Carryforwards elected shall be used in the order of the calendar years in which such carryforwards arose.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued and carryforward elections made after December 31, 2003.

By Mrs. FEINSTEIN:

S 1350. A bill to require Federal agencies, and persons engaged in interstate commerce, in possession of electronic data containing personal information, to disclose any unauthorized acquisition of such information; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Notification of Risk to Personal Data Act of 2003. This legislation will require that individuals are notified when their most sensitive personal information is stolen from a corporate or government database.

Specifically, the bill would require government or private entities to notify individuals if a data breach has compromised their Social Security number, driver's license number, credit card number, debit card number, or financial account numbers.

In most cases, if authorities know that someone is a victim of a crime, the victim is notified. But that isn't the case if an individual's most sensitive personal information is stolen from an electronic database.

Unfortunately, data breaches are becoming all too common. Consider the following incidents which have compromised the records of hundreds of thousands of Americans.

On April 5, 2002, a hacker broke into the electronic records of Steven P. Teale Data Center, the payroll facility for California State employees. The hacker compromises files containing the first initials, middle initials, and last names, Social Security numbers, and payroll deduction information of approximately 265,000 people. Despite the breathtaking potential harm of the crime, the breach was not publicly acknowledged and State employees were not made aware of their vulnerability

to identify theft until May 24, 2002—17 days later.

On December 14, 2002, TriWest Health Care Alliance, a company that provides health care coverage for military personnel and their families, was burglarized at its Phoenix, AZ offices. Thieves broke into a management suite and stole laptop computers and computer hard drives containing the names, addresses, telephone numbers, birth dates and Social Security numbers of 562,000 military service members, dependents and retirees, as well as medical claims records for people on active duty in the Persian Gulf.

In February 2003, a hacker gained access to 10 million Visa, MasterCard, American Express Card and Discovery Card numbers from the databases of a credit processor, DPI Merchant services of Omaha, NE. Company officials maintained that the intruder did not obtain any personal information for these card numbers such as the account holder's name, address, telephone number or Social Security number. However, at least one bank canceled and replaced 8,800 cards when it found out about the security breach.

And in March of this year, a University of Texas student was charged with hacking into the university's computer system and stealing 55,000 Social Security numbers.

These are just some examples of the types of breaches that are occurring today. Except for California, which as a notification law going into effect in July, no State or Federal law requires companies or agencies to tell individuals of the misappropriation of their personal data.

I strongly believe Americans should be notified if a hacker gets access to their most personal data. This is both a matter of principle and a practical measure to curb identity theft.

Let me take a moment to describe the proposed legislation.

The Notification of Risk to Personal Data Act will set a national standard for notification of consumers when a data breach occurs.

Specifically, the legislation requires a business or government entity to notify an individual when there is a reasonable basis to conclude that a hacker or other criminal has obtained unencrypted personal data maintained by the entity.

Personal data is defined by the bill as an individual's Social Security number, State identification number, driver's license number, financial account number, or credit card number.

The legislation's notification scheme minimizes the burdens on companies or agencies that must report a data breach.

In general, notice would have to be provided to each person whose data was compromised in writing or through e-mail. But there are important exceptions.

First, companies that have developed their own reasonable notification policies are given a safe harbor under the

bill and are exempted from its notification requirements.

Second, encrypted data is exempted.

Third, where it is too expensive or impractical, e.g., contact address information is incomplete, to notify every individual who is harmed, the bill allows entities to send out an alternative form of notice called "substitute notice." Substitute notice includes posting notice on a website or notifying major media.

Substitute notice would be triggered if any of the following factors exist: 1. the agency or person demonstrates that the cost of providing direct notice would exceed \$250,000; 2. the affected class of subject persons to be notified exceeds 500,000; or 3. the agency or person does not have sufficient contact information to notify people whose information is at risk.

The bill has a tough, but fair enforcement regime. Entities that fail to comply with the bill will be subject to fines by the Federal Trade Commission of \$5,000 per violation or up to \$25,000 per day while the violation persists. State Attorneys General can also file suit to enforce the statute.

Additionally, the bill would allow California's new law to remain in effect, but preempt conflicting State laws. It is my understanding that legislators in a number of States are developing bills modeled after the California law. Reportedly, some of these bills have requirements that are inconsistent with the California legislation. It is not fair to put companies in a situation that forces them to comply with database notification laws of 50 different States.

I strongly believe individuals have a right to be notified when their most sensitive information is compromised—because it is truly their information. Ask the ordinary person on the street if he or she would like to know if a criminal had illegally gained access to their personal information from a database—the answer will be a resounding yes.

Enabling consumers to be notified in a timely manner of security breaches involving their personal data will help combat the growth scourge of identity theft. According to the Identity Theft Resources Center, a typical identity theft victim takes six to 12 months to discover that a fraud has been perpetrated against them.

As Linda Foley, Executive Director of the Identity Theft Resources center puts it: "Identity theft is a crime of opportunity and time is essential at every junction. Every minute that passes after the breach until detection and notification increases the damage done to the consumer victim, the commercial entities, and law enforcement's ability to track and catch the criminals. It takes less than a minute to fill out a credit application and to start an action that could permanently affect the victim's life. Multiply that times hundreds of minutes, hundreds of opportunities to use or sell the informa-

tion stolen and you just begin to understand the enormity of the problem that the lack of notification can cause."

If individuals are informed of the theft of their Social Security numbers or other sensitive information, they can take immediate preventative action.

They can place a fraud alert on their credit report to prevent crooks from obtaining credit cards in their name; they can monitor their credit reports to see if unauthorized activity has occurred; they can cancel any affected financial or consumer or utility accounts; they can change their phone numbers if necessary.

I look forward to working with my colleagues to pass this vitally needed legislation. This bill will give ordinary Americans more control and confidence about the safety of their personal information. Americans will have the security of knowing that should a breach occur, they will be notified and be able to take protective action.

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. 1350

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 "Notification of Risk to Personal Data Act".

SEC. 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AGENCY.—The term "agency" has the same meaning given such term in section 551(1) of title 5, United States Code.

(2) BREACH OF SECURITY OF THE SYSTEM.—The term "breach of security of the system"—

(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to personal information maintained by the person or business; and

(B) does not include good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business, if the personal information is not used or subject to further unauthorized disclosure.

(3) PERSON.—The term "person" has the same meaning given such term in section 551(2) of title 5, United States Code.

(4) PERSONAL INFORMATION.—The term "personal information" means an individual's last name in combination with any 1 or more of the following data elements, when either the name or the data elements are not encrypted:

(A) Social security number.

(B) Driver's license number or State identification number.

(C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(5) SUBSTITUTE NOTICE.—The term "substitute notice" means—

(A) e-mail notice, if the agency or person has an e-mail address for the subject persons;

(B) conspicuous posting of the notice on the Internet site of the agency or person, if the agency or person maintains an Internet site; or

(C) notification to major media.

SEC. 3. DATABASE SECURITY.

(a) DISCLOSURE OF SECURITY BREACH.—

(1) IN GENERAL.—Any agency, or person engaged in interstate commerce, that owns or licenses electronic data containing personal information shall, following the discovery of a breach of security of the system containing such data, notify any resident of the United States whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(2) NOTIFICATION OF OWNER OR LICENSEE.—Any agency, or person engaged in interstate commerce, in possession of electronic data containing personal information that the agency does not own or license shall notify the owner or licensee of the information if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person through a breach of security of the system containing such data.

(3) TIMELINESS OF NOTIFICATION.—Except as provided in paragraph (4), all notifications required under paragraph (1) or (2) shall be made as expeditiously as possible and without unreasonable delay following—

(A) the discovery by the agency or person of a breach of security of the system; and

(B) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

(4) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT PURPOSES.—If a law enforcement agency determines that the notification required under this subsection would impede a criminal investigation, such notification may be delayed until such law enforcement agency determines that the notification will no longer compromise such investigation.

(5) METHODS OF NOTICE.—An agency, or person engaged in interstate commerce, shall be in compliance with this subsection if it provides the resident, owner, or licensee, as appropriate, with—

(A) written notification;

(B) e-mail notice, if the person or business has an e-mail address for the subject person; or

(C) substitute notice, if—

(i) the agency or person demonstrates that the cost of providing direct notice would exceed \$250,000;

(ii) the affected class of subject persons to be notified exceeds 500,000; or

(iii) the agency or person does not have sufficient contact information for those to be notified.

(6) ALTERNATIVE NOTIFICATION PROCEDURES.—Notwithstanding any other obligation under this subsection, an agency, or person engaged in interstate commerce, shall be deemed to be in compliance with this subsection if the agency or person—

(A) maintains its own reasonable notification procedures as part of an information security policy for the treatment of personal information; and

(B) notifies subject persons in accordance with its information security policy in the event of a breach of security of the system.

(7) REASONABLE NOTIFICATION PROCEDURES.—As used in paragraph (6), with respect to a breach of security of the system involving personal information described in section 2(4)(C), the term "reasonable notification procedures" means procedures that—

(A) use a security program reasonably designed to block unauthorized transactions before they are charged to the customer's account;

(B) provide for notice to be given by the owner or licensee of the database, or another party acting on behalf of such owner or licensee, after the security program indicates that the breach of security of the system has resulted in fraud or unauthorized transactions, but does not necessarily require notice in other circumstances; and

(C) are subject to examination for compliance with the requirements of this Act by 1 or more Federal functional regulators (as defined in section 509 of the Gramm-Leach Bliley Act (15 U.S.C. 6809)), with respect to the operation of the security program and the notification procedures.

(b) CIVIL REMEDIES.—

(1) PENALTIES.—Any agency, or person engaged in interstate commerce, that violates this section shall be subject to a fine of not more than \$5,000 per violation, to a maximum of \$25,000 per day while such violations persist.

(2) EQUITABLE RELIEF.—Any person engaged in interstate commerce that violates, proposes to violate, or has violated this section may be enjoined from further violations by a court of competent jurisdiction.

(3) OTHER RIGHTS AND REMEDIES.—The rights and remedies available under this subsection are cumulative and shall not affect any other rights and remedies available under law.

(c) ENFORCEMENT.—The Federal Trade Commission is authorized to enforce compliance with this section, including the assessment of fines under subsection (b)(1).

SEC. 4. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under this Act, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

- (A) enjoin that practice;
- (B) enforce compliance with this Act;
- (C) obtain damage, restitution, or other compensation on behalf of residents of the State; or
- (D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General—

- (i) written notice of the action; and
 - (ii) a copy of the complaint for the action.
- (B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the time the State attorney general files the action.

(b) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

- (1) conduct investigations;
- (2) administer oaths or affirmations; or
- (3) compel the attendance of witnesses or the production of documentary and other evidence.

(c) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (A) is an inhabitant; or
- (B) may be found.

SEC. 5. EFFECT ON STATE LAW.

The provisions of this Act shall supersede any inconsistent provisions of law of any State or unit of local government relating to the notification of any resident of the United States of any breach of security of an electronic database containing such resident's personal information (as defined in this Act), except as provided under sections 1798.82 and 1798.29 of the California Civil Code.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the expiration of the date which is 6 months after the date of enactment of this Act.

By Mr. FRIST:

S. 1351. A bill to amend the Tennessee Valley Authority Act of 1933 to modify provisions relating to the Board of Directors of the Tennessee Valley Authority, and for other purposes; to the Committee on Environment and Public Works.

Mr. FRIST. 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. 1351

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

SECTION 1. CHANGE IN COMPOSITION, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY.

(a) IN GENERAL.—The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended by striking section 2 and inserting the following:

“SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS.

“(a) MEMBERSHIP.—

“(1) APPOINTMENT.—The Board of Directors of the Corporation (referred to in this Act as the ‘Board’) shall be composed of 9 members appointed by the President by and with the advice and consent of the Senate, who shall be legal residents of the service area.

“(2) CHAIRMAN.—The members of the Board shall select 1 of the members to act as chairman of the Board.

“(b) QUALIFICATIONS.—

“(1) IN GENERAL.—To be eligible to be appointed as a member of the Board, an individual—

“(A) shall be a citizen of the United States;

“(B) shall have widely recognized experience or applicable expertise in the management of or decisionmaking for a large corporate structure;

“(C) shall not be an employee of the Corporation;

“(D) shall have no substantial direct financial interest in—

“(i) any public-utility corporation engaged in the business of distributing and selling power to the public; or

“(ii) any business that may be adversely affected by the success of the Corporation as a producer of electric power; and

“(E) shall profess a belief in the feasibility and wisdom of this Act.

“(2) PARTY AFFILIATION.—Not more than 5 of the 9 members of the Board may be affiliated with a single political party.

“(c) RECOMMENDATIONS.—In appointing members of the Board, the President shall—

“(1) consider recommendations from such public officials as—

“(A) the Governors of States in the service area;

“(B) individual citizens;

“(C) business, industrial, labor, electric power distribution, environmental, civic, and service organizations; and

“(D) the congressional delegations of the States in the service area; and

“(2) seek qualified members from among persons who reflect the diversity and needs of the service area of the Corporation.

“(d) TERMS.—

“(1) IN GENERAL.—A member of the Board shall serve a term of 5 years, except that in first making appointments after the date of enactment of this paragraph, the President shall appoint—

“(A) 2 members to a term of 2 years;

“(B) 1 member to a term of 3 years; and

“(C) 2 members to a term of 4 years.

“(2) VACANCIES.—A member appointed to fill a vacancy in the Board occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of that term.

“(3) REAPPOINTMENT.—

“(A) IN GENERAL.—A member of the Board that was appointed for a full term may be reappointed for 1 additional term.

“(B) APPOINTMENT TO FILL VACANCY.—For the purpose of subparagraph (A), a member appointed to serve the remainder of the term of a vacating member for a period of more than 2 years shall be considered to have been appointed for a full term.

“(e) QUORUM.—

“(1) IN GENERAL.—Six members of the Board shall constitute a quorum for the transaction of business.

“(2) MINIMUM NUMBER OF MEMBERS.—A vacancy in the Board shall not impair the power of the Board to act, so long as there are 6 members in office.

“(f) COMPENSATION.—

“(1) IN GENERAL.—A member of the Board shall be entitled to receive—

“(A)(i) a stipend of \$30,000 per year; plus

“(ii) compensation, not to exceed \$10,000 for any year, at a rate that does not exceed the daily equivalent of the annual rate of basic pay prescribed under level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the actual performance of duties as a member of the Board at meetings or hearings; and

“(B) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

“(2) ADJUSTMENTS IN STIPENDS.—The amount of the stipend under paragraph (1)(A)(i) shall be adjusted by the same percentage, at the same time and manner, and subject to the same limitations as are applicable to adjustments under section 5318 of title 5, United States Code.

“(g) DUTIES.—

“(1) IN GENERAL.—The Board shall—

“(A) establish the broad goals, objectives, and policies of the Corporation that are appropriate to carry out this Act;

“(B) develop long-range plans to guide the Corporation in achieving the goals, objectives, and policies of the Corporation and provide assistance to the chief executive officer to achieve those goals, objectives, and policies, including preparing the Corporation

for fundamental changes in the electric utility industry;

“(C) ensure that those goals, objectives, and policies are achieved;

“(D) approve an annual budget for the Corporation;

“(E) establish a compensation plan for employees of the Corporation in accordance with subsection (i);

“(F) approve the salaries, benefits, and incentives for managers and technical personnel that report directly to the chief executive officer;

“(G) ensure that all activities of the Corporation are carried out in compliance with applicable law;

“(H) create an audit committee, composed solely of Board members independent of the management of the Corporation, which shall—

“(i) recommend to the Board an external auditor;

“(ii) receive and review reports from the external auditor; and

“(iii) make such recommendations to the Board as the audit committee considers necessary;

“(I) create such other committees of Board members as the Board considers to be appropriate;

“(J) conduct public hearings on issues that could have a substantial effect on—

“(i) the electric ratepayers in the service area; or

“(ii) the economic, environmental, social, or physical well-being of the people of the service area; and

“(K) establish the electricity rate schedule.

“(2) MEETINGS.—The Board shall meet at least 4 times each year.

“(h) CHIEF EXECUTIVE OFFICER.—

“(1) APPOINTMENT.—The Board shall appoint a person to serve as chief executive officer of the Corporation.

“(2) QUALIFICATIONS.—To serve as chief executive officer of the Corporation, a person—

“(A) shall be a citizen of the United States;

“(B) shall have management experience in large, complex organizations;

“(C) shall not be a current member of the Board or have served as a member of the Board within 2 years before being appointed chief executive officer; and

“(D) shall have no substantial direct financial interest in—

“(i) any public-utility corporation engaged in the business of distributing and selling power to the public; or

“(ii) any business that may be adversely affected by the success of the Corporation as a producer of electric power; and

“(3) TENURE.—The chief executive officer shall serve at the pleasure of the Board.

“(i) COMPENSATION PLAN.—

“(1) IN GENERAL.—The Board shall approve a compensation plan that specifies salaries, benefits, and incentives for the chief executive officer and employees of the Corporation.

“(2) ANNUAL SURVEY.—The compensation plan shall be based on an annual survey of the prevailing salaries, benefits, and incentives for similar work in private industry, including engineering and electric utility companies, publicly owned electric utilities, and Federal, State, and local governments.

“(3) CONSIDERATIONS.—The compensation plan shall provide that education, experience, level of responsibility, geographic differences, and retention and recruitment needs will be taken into account in determining salaries of employees.

“(4) SUBMISSION TO CONGRESS.—No salary shall be established under a compensation plan until after the compensation plan and the survey on which it is based have been

submitted to Congress and made available to the public for a period of 30 days.

“(5) POSITIONS AT OR BELOW LEVEL IV.—The chief executive officer shall determine the salary and benefits of employees whose annual salary is not greater than the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“(6) POSITIONS ABOVE LEVEL IV.—On the recommendation of the chief executive officer, the Board shall approve the salaries of employees whose annual salaries would be in excess of the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.”.

(b) CURRENT BOARD MEMBERS.—A member of the board of directors of the Tennessee Valley Authority who was appointed before the effective date of the amendment made by subsection (a)—

(1) shall continue to serve as a member until the date of expiration of the member's current term; and

(2) may not be reappointed.

SEC. 2. CHANGE IN MANNER OF APPOINTMENT OF STAFF.

Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) is amended—

(1) by striking the first undesignated paragraph and inserting the following:

“(a) APPOINTMENT BY THE CHIEF EXECUTIVE OFFICER.—The chief executive officer shall appoint, with the advice and consent of the Board, and without regard to the provisions of the civil service laws applicable to officers and employees of the United States, such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation.”; and

(2) by striking “All contracts” and inserting the following:

“(b) WAGE RATES.—All contracts”.

SEC. 3. CONFORMING AMENDMENTS.

(a) The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended—

(1) by striking “board of directors” each place it appears and inserting “Board of Directors”; and

(2) by striking “board” each place it appears and inserting “Board”.

(b) Section 9 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h) is amended—

(1) by striking “The Comptroller General of the United States shall audit” and inserting the following:

“(c) AUDITS.—The Comptroller General of the United States shall audit”; and

(2) by striking “The Corporation shall determine” and inserting the following:

“(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS DOCUMENTS.—The Corporation shall determine”.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act take effect, and 7 additional members of the Board of Directors of the Tennessee Valley Authority shall be appointed so as to commence their terms on, the first date following the date of enactment of this Act on which the term of a member of the Board of Directors of the Tennessee Valley Authority expires.

By Mr. WYDEN (for himself and Mrs. FEINSTEIN):

S. 1352. A bill to expedite procedures for hazardous fuels reduction activities and restoration in wildland fire prone National Forests and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. WYDEN. Mr. President: Today, I introduce, for myself and Mrs. FEIN-

STEIN, the Community and Forest Protection Act. I ask unanimous consent that the text of the bill to be printed in the RECORD.

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

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

(a) FINDINGS.—Congress finds that:

(1) In 2002, approximately six and one half million acres of forest lands in the U.S. burned with varying degrees of severity, 21 people lost their lives, and over 3000 structures were destroyed. The Forest Service and Bureau of Land Management spent more than \$1 billion fighting these fires.

(2) 73 million acres of public lands are classified as condition class 3 fire risks. This includes 23 million acres that are in strategic areas designated by the U.S. Forest Service for emergency treatment to withstand catastrophic fire.

(3) The forest management policy of fire suppression has resulted in an accumulation of fuel loads, dead and dying trees, and non-native species that create fuel ladders which allow fires to reach the crowns of large old trees and cause catastrophic fire.

(4) The U.S. Forest Service and the Department of the Interior should immediately undertake an emergency program to reduce the risk of catastrophic fire.

(5) This emergency program should prioritize the protection of homes and communities and the restoration of forest health on lands at the highest risk of catastrophic fire. All fuel reduction treatments should protect old growth stands and large trees to ensure a rich and continued species diversity in the nation's forests.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Community and Forest Protection Act”.

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

Sec. 1 Short title; table of contents.

Sec. 2 Hazardous fuels reduction projects.

Sec. 3 Expedited process.

Sec. 4 Judicial review in the United States District Courts.

Sec. 5 Contracting.

Sec. 6 Biomass grants.

Sec. 7 Forest stands inventory and monitoring program.

Sec. 8 Emergency fuels reduction grants.

Sec. 9 Market incentives for home protection.

Sec. 10 Ongoing projects and existing authorities.

Sec. 11 Preference to communities that have ordinances on fire prevention.

Sec. 12 Sunset.

Sec. 13 Authorization of appropriations.

Sec. 14 Definitions.

SEC. 2. HAZARDOUS FUELS REDUCTION PROJECTS.

(a) IN GENERAL.—The Secretaries of Agriculture and the Interior shall conduct immediately and to completion hazardous fuels reduction projects consistent with the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment on an aggregate area of 20 million acres of federal land.

(1) These projects shall be conducted on the priority lands identified in subsection (d), using the expedited procedures in section 3.

(2) The Secretaries shall protect old growth stands and large trees pursuant to subsection (h).

(b) SELECTION OF PROJECTS.—The Secretaries of Agriculture and the Interior shall

jointly select hazardous fuels reduction projects identified by the Implementation Plan of the Comprehensive Strategy.

(c) **CONSISTENCY WITH EXISTING FOREST MANAGEMENT PLANS AND ENVIRONMENTAL LAWS.**—Any project carried out pursuant to this Act shall be consistent with the applicable forest plan, resource management plan, or other applicable agency plans or environmental laws except as specifically amended by this Act.

(d) **PRIORITY LANDS.**—In implementing projects under this Act, the Secretaries of Agriculture and the Interior shall give highest priority to:

(1) **Wildland-urban interface:** Condition class 3 or condition class 2 federal lands or, where appropriate, non-federal lands;

(2) **Municipal watersheds:** Condition class 3 federal lands located in such proximity to a municipal water supply system that a hazardous fuels reduction project must be carried out to reduce the risk of harm to such system resulting from wildfire;

(3) **Fire Regime I lands:** Federal lands that are condition class 3; and

(4) **Fire Regimes II and III lands:** Condition class 3 federal lands identified by the Secretary as an area where windthrow or blow-down, or the existence of disease or insect infestation, pose a significant threat to forest health or adjacent private lands.

(e) **PUBLIC NOTICE AND PUBLIC RESPONSE.**—

(1) **QUARTERLY NOTICE.**—The Secretary shall provide quarterly notice of each hazardous fuels reduction project which uses the streamlined processes established by this Act. The quarterly notice shall be provided for all projects in the Federal Register and on an agency website and in a local paper of record for local projects. The Secretary may combine this quarterly notice with other quarterly notices otherwise issued regarding federal forest management.

(2) **CONTENT.**—For each hazardous fuels reduction project for which the processes established by this Act are to be used the notice required by paragraph (1) shall include at a minimum:

(A) identification of each project as a hazardous fuels reduction project for which the processes established by this Act are to be used;

(B) a description of the project, including as much information on its geographic location as practicable;

(C) the approximate date on which scoping for the project will begin; and

(D) information regarding how interested members of the public can take part in the development of the project, including, but not limited to, project related public meeting notification.

(3) **PUBLIC MEETING.**—Following publication of each quarterly notice under paragraph (1), but before the beginning of scoping under section 3(a), the Secretary shall conduct a public meeting at an appropriate location in each administrative unit of the federal lands regarding those hazardous fuels reduction projects contained in the quarterly notice that are proposed to be conducted in that administrative unit. The Secretary shall provide advance notice of the date and time of the meeting in the quarterly notice or using the same means described in paragraph (1).

(4) **PUBLIC RESPONSE TO NOTICE OF PROJECTS.**—

(A) **IN GENERAL.**—A federally formed resource advisory committee may petition, with supporting evidence, the Secretary to better assess ground conditions of land to be covered by projects, during scoping or public comment on specific hazardous fuels reduction projects identified under subsection (b).

(B) **PRIORITY LANDS INCLUDED IN THE PROJECTS.**—For specific hazardous fuels reduction projects the petitioner may seek to

correct the inclusion or exclusion of priority lands identified in subsection (d). The petitioner may also seek designation of large trees or old growth stands to be protected under subsection (h).

(C) **SECRETARIAL RESPONSE.**—The Secretary must respond to the petition within 30 days by public notice by the same means described in paragraph (1). The Secretary shall provide a public viewing of the area in question if requested in the petition within 90 days of receipt of the petition, with the petitioner and any other interested parties.

(D) **DETERMINATION OF PETITION.**—The Secretary must accept or deny the petition within 120 days of its receipt, based on site-specific review of historic ecological conditions, forest type, present fuel loads, and determination of whether the area properly qualifies as priority lands under subsection (d).

(5) **FINAL AGENCY ACTION.**—The Secretary shall provide notice by the same means described in paragraph (1) of any final agency action regarding a hazardous fuels reduction project for which the processes established by this Act are used.

(f) **PRIORITY HAZARDOUS FUELS REDUCTION FUNDING.**—The Secretaries shall expend no less than 70 percent of funds under this Act on projects within the wildland-urban interface, provided that the Secretaries may adjust this funding formula for a particular State at the request of its governor. In no event shall the Secretaries expend less than 50 percent or greater than 75 percent of funds within the wildland-urban interface for a particular State.

(g) **MONITORING.**—The Secretaries shall establish a multiparty monitoring process with representation from resource industries, environmentalists, independent scientists, community-based organizations, and other interested parties in order for Congress to assess a representative sampling of the hazardous fuels reduction projects implemented pursuant to this Act.

(h) **LIMITATIONS.**—In implementing hazardous fuels reduction projects under this Act the Secretary:

(1) shall not undertake any hazardous fuels reduction projects in wilderness study areas or components of the National Wilderness Preservation System;

(2) shall not construct new roads in inventoried roadless areas as part of any hazardous fuels reduction project;

(3) shall fully maintain the structure, function, processes and composition of structurally complex older forests (old growth) according to each ecosystem type; and

(4) outside old growth stands:

(A) shall focus on small diameter trees and thin from below to modify fire behavior as measured by rate of spread, height to live crown, and flame length; and

(B) shall maximize the retention of large trees to the extent that they promote fire-resistant stands and species diversity as appropriate for the forest type and site.

SEC. 3. EXPEDITED PROCESS.

(a) **SCOPING.**—The Secretary shall conduct scoping for each hazardous fuels reduction project implemented pursuant to this Act.

(b) **CATEGORICAL EXCLUSIONS IN THE WILDLAND-URBAN INTERFACE.**—

(1) **IN GENERAL.**—The wildland-urban interface hazardous fuels reduction projects authorized by this Act are conclusively determined to be categorically excluded from further analysis under the National Environmental Policy Act of 1969 (“NEPA”), 42 U.S.C. 4332, and the Secretary need not make any findings as to whether the projects individually or cumulatively have a significant effect on the environment.

(2) **VARIED TREATMENTS.**—The Secretary shall vary the treatments and avoid clear

cuts inside the wildland-urban interface to ensure forest health. The Secretary shall also protect old growth and large trees pursuant to subsection 2(h).

(3) **EXTRAORDINARY CIRCUMSTANCES EXCEPTION.**—For all hazardous fuels reduction projects implemented pursuant to this subsection, if there are extraordinary circumstances, the Secretary shall follow agency procedures related to categorical exclusions and extraordinary circumstances. For the purposes of this subsection, a project's location within a municipal watershed shall not be considered an extraordinary circumstance.

(4) **APPEALS.**—No hazardous fuels reduction projects implemented pursuant to this subsection shall be subject to appeal requirements of the Appeals Reform Act (section 322 of Public Law 102-381) or the Department of the Interior Office of Hearings and Appeals.

(c) **ENVIRONMENTAL ASSESSMENTS OUTSIDE THE WILDLAND-URBAN INTERFACE.**—

(1) **IN GENERAL.**—For hazardous fuels reduction projects implemented pursuant to this Act on priority lands identified in section 2(d), if a categorical exclusion does not apply, the Secretary shall determine, consistent with NEPA, whether an environmental assessment is sufficient and use the procedures set forth in the Council on Environmental Quality “Guidance for Environmental Assessments of Forest Health Projects,” of December 9, 2002, or as amended.

(2) **ISSUANCE OF DOCUMENTATION AND SHORTENED APPEALS.**—Notwithstanding the Appeals Reform Act, section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law 102 381; 16 U.S.C. 1612 note), or regulations pertaining to the Department of the Interior Office of Hearings and Appeals procedures, for hazardous fuels reduction projects implemented by environmental assessments pursuant to subsection (c)(1):

(A) The Secretary may issue the environmental documentation and the decision document for the project simultaneously without public comment. Such issuance shall begin the administrative appeals process immediately.

(B) Persons must file any administrative appeal of projects under this subsection within 30 days after the date of issuance of a decision;

(C) The Secretary shall resolve any appeal not later than 30 days after the closing date for filing an appeal;

(D) If the review officer determines that an appeal has merit, in lieu of remanding the proposed agency action, the review officer, in consultation with the parties, may sign a new decision; and (E) The Secretary shall stay implementation of the project for 15 days beginning on the date on which the Secretary resolves any administrative appeal that complies with the requirements in subsection (d).

(d) **STANDING TO APPEAL.**—If a draft document prepared pursuant to NEPA for a hazardous fuels reduction project was available for public comment, or the project had scoping, the Secretary may require that a person filing an administrative appeal with respect to the project must have been involved in the public comment process for the project by submitting specific and substantive written comments with regard to the project or must have participated in the scoping of the project.

(e) **SALVAGE MONITORING PILOT PROGRAM.**—

(1) **SALVAGE PILOT.**—The Secretary is authorized to use the administrative appeals authorities under this subsection, pursuant to paragraph (2), for salvage hazardous fuels reduction projects in the area popularly known as the Biscuit Fire and reference on

the map entitled and dated _____ on file at the Forest Service _____ office.

(2) **MONITORING.**—The Secretary shall require that any salvage hazardous fuels reduction project on the Biscuit Fire be subject to ecological and economic monitoring of its effects, including on-site evaluation and inspections. The monitoring shall be conducted by a group with representation from independent scientists, industry representatives, environmentalists, community-based organizations, and other interested parties. Group selection shall be through the Western Governors Association Collaborative process. The group shall report to the public under section 2(e)(1) on the ecological and economic effects of individual salvage hazardous fuels projects.

SEC. 4. JUDICIAL REVIEW IN THE UNITED STATES DISTRICT COURTS.

(a) **VENUE.**—A hazardous fuels reduction project conducted under this Act shall be subject to judicial review only in the United States district court for the district in which the federal lands to be treated by the hazardous fuels reduction project are located, notwithstanding 28 U.S.C. 1391 or any other applicable venue statutes.

(b) **EXPEDITIOUS COMPLETION OF JUDICIAL REVIEW.**—Congress intends and encourages any court in which is filed a lawsuit or appeal of a lawsuit concerning an authorized hazardous fuels reduction project to expedite, to the maximum extent practicable, the proceedings in such lawsuit or appeal with the goal of rendering a final determination on jurisdiction, and if jurisdiction exists, a final determination on the merits, as soon as possible from the date the complaint or appeal is filed.

(c) **DURATION OF INJUNCTION.**—Any temporary injunctive relief granted regarding a project undertaken pursuant to this Act shall be limited to 60 days, with authority to renew each temporary injunction without limitation. For each injunctive renewal the parties shall present the court with updates on the status of the project.

(d) **STANDARD OF REVIEW.**—Nothing in this section shall change the standards of judicial review for any action concerning a project authorized under this Act.

SEC. 5. CONTRACTING.

(a) **BEST VALUE CONTRACTING.**—The Secretary shall use best value contracting criteria in awarding at least fifty percent of contracts and agreements for hazardous fuels reduction projects pursuant to this Act. Best value contract criteria will include, but not be limited to:

(1) the ability of the contractor to meet the ecological goals of the projects;

(2) the use of equipment that will minimize or eliminate impacts on soils; and (3) benefit to local economies in performing the restorative treatments and ensuring that wood by-products are processed locally.

(b) **MONITORING.**—The Forest Service shall monitor the business and employment impacts of hazardous fuels reduction projects including the total dollar value of contracts and agreements awarded to qualifying entities.

(c) **PUBLIC LANDS CORPS.**—

(1) **CONTRACTS AND AGREEMENTS.**—

(A) **IN GENERAL.**—The Secretaries are authorized to enter into contracts or cooperative agreements with a Public Lands Corps

(i) to implement and complete projects prioritized in section 2(b) and (d) of this Act; and

(ii) to perform appropriate rehabilitation, enhancement, or beautification projects with the Department of Natural Resources, Department of Forestry or Department of Agriculture of any State.

(B) **INDIAN LANDS.**—Such projects may also be carried out on Indian lands with the approval of the relevant Indian tribe.

(C) **PREFERENCE.**—The Secretaries shall give preference to those projects which take place on lands identified as priorities in section 2(d) of this Act and can be planned and initiated promptly.

(D) **SUPPORTIVE SERVICES.**—The Secretaries are authorized to provide such services as the Secretaries deem necessary to carry out the purposes of this Act.

(E) **TECHNICAL ASSISTANCE.**—The Secretaries shall work with the National Association of Service and Conservation Corps to provide technical assistance, oversight, monitoring, and evaluation to the United States Departments of Agriculture and the Interior, State Departments of Natural Resources and Agriculture, and Public Lands Corps.

(2) **NONDISPLACEMENT.**—The nondisplacement requirements of Section 177 of the National and Community Service Trust Act of 1990 shall be applicable to all activities carried out under this Act by the Public Lands Corps.

(3) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of this subsection there are authorized to be appropriated \$12,500,000 annually for 5 years after the enactment of this Act.

(d) **DEFINITIONS.**—For the purposes of this section—

(1) **CONTRACTS AND AGREEMENTS.**—The term “contracts and agreements” means service contracts, timber sale contracts, construction contracts, supply contracts, emergency equipment rental agreements, architectural and engineering contracts, challenge cost-share agreements, cooperative agreements, and participating agreements.

(2) **QUALIFYING ENTITY.**—The term “qualifying entity” means—

(A) a natural-resource related small or micro-enterprise;

(B) a Youth Conservation Corps or Public Lands Corps crew or related partnership with State, local and other non-federal conservation corps;

(C) an entity that will hire and train local people to complete the contract or agreement;

(D) an entity that will re-train non-local traditional forest workers to complete the contract or agreement; or

(E) a local entity that meets the criteria to qualify for the Historically Underutilized Business Zone Program under section 32 of the Small Business Act (15 U.S.C. 637a).

(3) **PUBLIC LANDS CORPS.**—The term “Public Lands Corps” means any organization established by a state or local government, non-profit organization, or Indian tribe that:

(A) has demonstrated the ability:

(i) to provide labor intensive productive work to individuals;

(ii) to recruit and train economically disadvantaged or at-risk youth;

(iii) to give participants a combination of work experience, basic and life skills, education, training and support services; and

(iv) to provide participants with the opportunity to develop citizenship values through service to their communities and the United States; and

(B) has also successfully completed, or is engaged in, a peer-reviewed, standards based program assessment process.

(4) **STATE.**—The term “State” means any State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, or the Commonwealth of the Northern Mariana Islands.

SEC. 6. BIOMASS GRANTS.

(a) **DEFINITIONS.**—For the purposes of this section:

(1) **ELIGIBLE OPERATION.**—The term “eligible operation” means a facility, that is located within the boundaries of an eligible community and uses biomass from federal or

Tribal lands as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products.

(2) **BIOMASS.**—The term “biomass” means pre-commercial thinnings of trees and woody plants, or non-merchantable material, from hazardous fuels reduction projects.

(3) **GREEN TON.**—The term “green ton” means 2,000 pounds of biomass that has not been mechanically or artificially dried.

(4) **ELIGIBLE COMMUNITY.**—The term “eligible community” means any Indian Reservation, or any county, town, township, municipality, or other similar unit of local government that has a population of not more than 50,000 individuals and is determined by the Secretary to be located in an area near federal or Tribal lands which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(5) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(b) **BIOMASS COMMERCIAL UTILIZATION GRANT PROGRAM.**—

(1) **IN GENERAL.**—The Secretary may make grants to any individual, community, Indian tribe, small business or corporation, or non-profit that owns or operates an eligible operation to offset capital expenses and costs incurred to purchase biomass for use by such eligible operation with priority given to operations using biomass from the highest risk areas.

(2) **LIMITATION.**—No grant provided under this subsection shall be paid at a rate that exceeds \$20 per green ton of biomass delivered.

(3) **RECORDS.**—Each grant recipient shall keep such records as the Secretary may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by the Secretary, the grant recipient shall provide the Secretary reasonable access to examine the inventory and records of any eligible operation receiving grant funds.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of this subsection, there are authorized to be appropriated \$12,500,000 each to the Secretary of the Interior and the Secretary of Agriculture for each fiscal year for five years after the date of enactment of this Act.

(c) **IMPROVED BIOMASS UTILIZATION PROGRAM.**—

(1) **IN GENERAL.**—The Secretary may make grants to persons in eligible communities to offset the costs of developing or researching proposals to improve the use of biomass or add value to biomass utilization.

(2) **SELECTION.**—Grant recipients shall be selected based on the potential for the proposal to—

(A) develop affordable thermal or electric energy resources for the benefit of an eligible community;

(B) provide opportunities for the creation or expansion of small businesses within an eligible community;

(C) create new job opportunities within an eligible community, and

(D) reduce the hazardous fuels from the highest risk areas.

(3) **LIMITATION.**—No grant awarded under this subsection shall exceed \$500,000.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of this subsection, there are authorized to be appropriated \$12,500,000 each to the Secretary of the Interior and the Secretary of Agriculture for each fiscal year for the five years after enactment of this Act.

(d) **REPORT.**—Not later than 3 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of

Agriculture shall jointly submit to the Congress a report that describes the interim results of the programs authorized under this section.

SEC. 7. FOREST STANDS INVENTORY AND MONITORING PROGRAM.

(a) **IN GENERAL.**—The Secretary of Agriculture and the Secretary of the Interior shall carry out, in conjunction with the National Aeronautics and Space Administration and other relevant agencies and research facilities (including the Forest Service Research Stations and academic institutions), a comprehensive program to inventory and assess forest stands on federal forest land and, with the consent of the owner, private forest land. The objective of this program shall be to evaluate current and future forest health conditions and address ecological impacts of insect, disease, invasive species, fire and weather-related episodic events. Emphasis shall be placed upon coordinating, reconciling, and field verification of existing data (including remotely sensed and modeled data utilized to characterize vegetation/cover types, density, fire regimes, fire effects, and condition classes), and improving the accuracy of such data to assist in management activities.

(b) **LOCATION.**—The facility for this program shall be located at the Ochoco National Forest Headquarters in Prineville, Oregon.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of this section, there are authorized to be appropriated \$5,000,000 each fiscal year for the five years after enactment of this Act.

SEC. 8. EMERGENCY FUELS REDUCTION GRANTS.

(a) **IN GENERAL.**—The Secretary of Agriculture shall establish an Emergency Fuels Reduction Grant program to provide State and local agencies with financial assistance for hazardous fuels reduction projects addressing threats of catastrophic fire that have been determined by the United States Forest Service to pose a serious threat to human life.

(b) **ELIGIBILITY.**—Fuels reduction projects eligible for funding under the Emergency Fuels Reduction Grant program shall:

(1) be surrounded by or immediately adjacent to national forest boundaries;

(2) have been determined to be of paramount urgency by virtue of declarations of emergency by both local officials and the governor of the State in which they are located; and

(3) remove fuel loading determined to pose a serious threat to human life by the United States Forest Service.

(c) **USE OF GRANT FUNDS.**—Funds authorized under this section shall be limited to the following uses:

(1) removal of trees, shrubs or other potential fuels adjacent to primary evacuation routes;

(2) removal of trees, shrubs or other potential fuels adjacent to emergency response centers, emergency communication facilities or sites designated as shelter-in-place facilities; and

(3) evacuation drills and preparation.

(d) **REVOLVING FUND.**—For work done on private property and county lands, the grant recipients shall deposit into a revolving fund any proceeds from sale of the timber or biomass from the projects funded under this section. The revolving fund shall be used to assist with subsequent grants under this section.

(e) **EMERGENCY FUELS REDUCTION GRANTS.**—For the purposes of funding the Emergency Fuels Reduction Grant program under this Act, there are authorized to be appropriated to the Secretary of Agriculture \$50,000,000 each fiscal year that this Act is in effect. Subject to section 13, amounts appro-

riated in one fiscal year and unobligated before the end of that fiscal year shall remain available for use in subsequent fiscal years.

SEC. 9. MARKET INCENTIVES FOR HOME PROTECTION.

It is the Sense of Congress that insurers should reduce premiums for homeowners in condition class 2 and condition class 3 areas within the wildland-urban interface who:

(1) clear brush and other flammable material in the vicinity of their homes;

(2) use non-flammable building materials for roofs and other critical structures; or

(3) otherwise improve the defensibility of their homes against catastrophic fire.

SEC. 10. ONGOING PROJECTS AND EXISTING AUTHORITIES.

Nothing in this Act shall affect projects begun prior to enactment of this Act or affect authorities otherwise granted to the Secretaries under existing law.

SEC. 11. PREFERENCE TO COMMUNITIES THAT HAVE ORDINANCES ON FIRE PREVENTION.

(a) **IN GENERAL.**—In determining the allocation of funding for the Community and Private Land Fire Assistance Program (16 USC 2106c/PL-171 Sec. 10A(b)), the Secretary shall prioritize funding to those communities which have taken proactive steps through the enactment of ordinances and other means, including those that have developed a comprehensive fire protection plan encompassing all ownerships, to encourage property owners to reduce fire risk on private property.

(b) **PRIVATE LANDS.**—Nothing in this Act shall affect existing authorities to use appropriations authorized by this Act to carry out the provisions under this Act on non-federal lands with the consent of the land owner.

SEC. 12. SUNSET.

The provisions of this Act shall expire five years after the date of enactment, except that projects for which a decision notice has been issued by that date may continue to be implemented.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) **NATIONAL FOREST SYSTEM LANDS.**—For the purposes of planning and conducting hazardous fuels reduction projects under this Act on National Forest System Lands, there are authorized to be appropriated to the Secretary of Agriculture \$1,943,100,000 during the five-fiscal year period beginning October 1, 2003. Subject to section 12, amounts appropriated in one fiscal year and unobligated before the end of that fiscal year shall remain available for use in subsequent fiscal years.

(b) **BLM LANDS.**—For the purpose of planning and conducting hazardous fuels reduction projects under this Act on Federal lands managed by the Secretary of the Interior, there are authorized to be appropriated to the Secretary of the Interior \$1,888,000,000 during the five-fiscal year period beginning October 1, 2003. Subject to section 12, amounts appropriated in one fiscal year and unobligated before the end of that fiscal year shall remain available for use in subsequent fiscal years.

SEC. 14. DEFINITIONS.

(a) **LAND TYPES AND FIRE REGIME AREAS.**—In this Act definitions of land types and fire regimes originate from the U.S. Forest Service Rocky Mountain Research Station, as follows—

(1) **CONDITION CLASS 2.**—The term “condition class 2” refers to lands on which—

(A) fire frequencies have been moderately altered and have departed from historic fire return frequencies (either increased or decreased) by one or more return interval, which results in moderate changes to fire size, frequency, intensity, severity or landscape patterns;

(B) there exists a moderate risk of losing key ecosystem components; and

(C) vegetation attributes have been moderately altered from their historic range.

(2) **CONDITION CLASS 3.**—The term “condition class 3” refers to lands on which—

(A) fire regimes have been significantly altered from their historic range, which results in dramatic changes to fire size, frequency, intensity, severity, or landscape patterns;

(B) there exists a high risk of losing key ecosystem components; and

(C) vegetation attributes have been significantly altered from their historic range.

(3) **FIRE REGIME I.**—The term “fire regime I” refers to lands on which historically fire recurs in 0-35 year intervals and burns with low severity.

(4) **FIRE REGIME II.**—The term “fire regime IP” refers to lands on which historically fire recurs in 0-35 year intervals and replaces existing vegetation.

(5) **FIRE REGIME III.**—The term “fire regime III” refers to lands on which historically fire recurs in 35-100 year intervals and burns with mixed severity.

(b) **At-Risk Community.**—The term “at-risk community” means a geographic area designated by the Secretary as any area—

(1) defined as an interface community in Volume 66, page 753, of the January 4, 2001 Federal Register;

(2) on which conditions are conducive to large-scale wildland fire disturbance events; and

(3) for which a significant threat to human life exists as a result of wildland fire disturbance events.

(c) **BEST VALUE CONTRACTING.**—The term “best value contracting” means the contracting process described in section 15.101 of title 48, Code of Federal Regulations, which allows the inclusion of non-cost factors in the federal contract process.

(d) **COMPREHENSIVE STRATEGY.**—The term “Comprehensive Strategy” means the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, dated May 2002, including by reference the related Implementation Plan, which was developed pursuant to the conference report to accompany the Department of Interior and Related Agencies Appropriations Act, 2001 (House Report 106-646).

(e) **FEDERAL LANDS.**—The term “federal lands” means National Forest System lands and public forested lands administered by the Secretary of the Interior acting through the Bureau of Land Management.

(f) **GEOGRAPHIC FEATURE.**—The term “geographic feature” means a ridge top, road, stream, or other landscape feature which can serve naturally as a firebreak, staging ground for firefighting, or boundary affecting fire behavior.

(g) **HAZARDOUS FUELS REDUCTION PROJECT.**—The term “hazardous fuels reduction project” means a project—

(1) undertaken for the purpose of reducing the amount of hazardous fuels resulting from alteration of a natural fire regime as a result of fire suppression or other management activities; and

(2) accomplished through the use of prescribed burning or mechanical treatment, or a combination thereof.

(h) **INVENTORIED ROADLESS AREA.**—The term “inventoried roadless area” means one of the areas identified in the set of inventoried roadless area maps contained in the Forest Service Roadless Areas Conservation, Final Environmental Impact Statement, Volume 2, dated November, 2000.

(i) **LOCAL PREFERENCE CONTRACTING.**—The term “local preference contracting” means the federal contracting process that gives preference to local businesses described in section 333 of the Department of Interior and

Related Agencies Appropriations Act, 2003 (division F of Public Law 108-7, 117 Stat. 277).

(j) MUNICIPAL WATER SUPPLY SYSTEM.—The term “municipal water supply system” means reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, or other surface facilities and systems constructed or installed for the impoundment, storage, transportation, or distribution of drinking water for a community.

(k) SECRETARY.—The term “Secretary” means the Secretary of Agriculture, or the Secretary’s designee, with respect to National Forest System lands; and the Secretary of the Interior, or the Secretary’s designees, with respect to public lands administered by the Secretary through the Bureau of Land Management.

(l) WILDLAND-URBAN INTERFACE.—The term “wildland-urban interface” means the area either within an at-risk community or within the area.

(1) extending out to a geographic feature, if there is such a feature within approximately three-quarters of a mile of the community boundary; or

(2) if there is no such geographic feature, extending out one-half mile from the community boundary.

Mrs. FEINSTEIN. I rise to introduce with Senator WYDEN a bill to reduce the risk of catastrophic fire in our country’s magnificent national forests.

No one who watched last week as Arizona’s community of Summerhaven on Mount Lemmon burned can doubt the importance of this issue. My heart goes out to the residents of Summerhaven, and to the others who will be displaced by the fires yet to come this summer.

Americans know that there is something wrong with our national forests. For too long we have suppressed fires, gradually letting brush and small trees multiply until many of our forests are now choked by a dense thicket.

Today, there are 57 million acres of Federal lands at the highest risk of catastrophic forest fires. If we do not take action now, these forests could go up in smoke. This bill we are introducing today is balancing, and it will reduce the risk of catastrophic fire in our country’s magnificent national forests.

This legislation would speed up the environmental review process—without sacrificing the most important environmental protections. It also would protect the communities which face the highest risk and safeguard old growth stands and large trees. And it would include sensible provisions on judicial review that will help projects go forward quickly without compromising our independent judiciary. These are provisions that makes sense, and I hope that my colleagues will support the bill.

We have crafted our bill around three fundamental principles:

We should focus limited Federal resources on protecting communities and on the forest lands truly most at risk;

We should speed up the environmental review process, but without sacrificing the most important environmental protections; and

We should protect old growth stands and large trees.

Let me show how the bill achieves these three goals.

First, the bill prioritizes our efforts. Many people believe that we should protect communities first. The bill does so. Seventy percent of the funding is directed to the wildland-urban interface near communities.

Of course, conditions vary by State. The bill allows Governors to adjust the percentage of work that is to be done within the wildland—urban interface for their State, up to a maximum of 75 percent, or down to a minimum of 50 percent.

By way of contrast, H.R. 1904, which passed the House, includes no focus on protecting communities. All the money can be spent far from communities under H.R. 1904, even if the Governor of a State wishes otherwise.

Senator WYDEN and I believe that in addition to protecting communities, there are some forest lands that should be thinned to ensure that catastrophic fires do not devastate the forest and eliminate habitat for the species that have there.

In the last century, Americans have rigorously suppressed fires, stamping them out whenever they start. In certain forests like ponderosa pine, these fires would naturally have cleared out the brush and small trees every 10 or 20 years or so.

In the absence of these fires, brush has grown into “doghair thickets” with dangerous levels of fuel loadings. When fires burn now in these forests, they will be so hot that they won’t just clear out the brush but will kill the large trees and often scorch the soil.

These are the forests where we need to focus our efforts. We thus target thinning projects to forests that are both Fire Regime I and Condition Class 3. Fire Regime I forests are those that used to have low-intensity, brush-clearing fires; and Condition Class 3 forests are the most altered from their natural condition. The combination of Fire Regime I and Condition Class 3 are the highest priority lands for treatment.

We also direct projects to municipal watersheds and diseased or windblown forests that are in Condition Class 3. If we don’t protect the municipal watersheds, catastrophic fires could strip off the tree cover that prevents soils from eroding into creeks and lakes. Municipalities’ water quality could suffer.

In contrast to our bill, H.R. 1904 fails to prioritize brush-clearing projects for the areas that need it the most. Instead, H.R. 1904 provides expedited processes for lands that are only moderately altered by fire suppression—Condition Class 2 lands in addition to Condition Class 3.

In many of the forests where H.R. 1904 would direct brush-clearing work, there naturally would have been severe fires that burned all the trees in the stand. After a thinning project, fires in these forests will still behave the same way, scorching and killing most of the trees. Thus, much of the thinning called for in H.R. 1904 would have little effect on the fire behavior or forest health.

Senator WYDEN and I have worked very hard to develop a bill that speeds up the review process so important work can get done without sacrificing environmental protections.

Almost everyone agrees that we need to work quickly to protect the areas immediately around communities. There is little controversy or debate over these projects.

The Forest Service has proposed an analytical short-cut for these projects, which requires very little environmental analysis and no formal public comment process or administrative appeal.

There is some uncertainty, however, over the Forest Service’s proposed approach. People can claim that laws Congress has previously passed will require some of these projects to be held up by more environmental analysis or administrative appeals.

Our bill eliminates this uncertainty. When the Forest Service works in the immediate vicinity of a community, the bill would make absolutely clear that there need to be no environmental analysis or administrative appeals. The only exception is where there might be extraordinary circumstances, such as a major threat to endangered species. We also prohibit the Forest Service from conducting clearcuts around communities, requiring them to focus on clearing out the brush.

By way of comparison, the House-passed bill does not provide any assistance to thinning projects in the immediate vicinity of communities, even though everyone agrees on the need for these projects.

Senator WYDEN and I have also sped up the process for projects outside the immediate vicinity of communities. These projects are more controversial, so we want to make sure that the public has some opportunity for input.

In the past, the Forest Service and the Department of the Interior have been able to conduct the majority of brush-clearing mechanical treatment following a National Environmental Policy Act process known as environmental assessments. Our bill simplified these environmental assessments in several ways.

The bill provides one round of public comment—the administrative appeal process—rather than two.

The bill shortens the time frame for administrative appeals from 90 to 60 days.

Finally, the appeal deciding offer can make necessary changes rather than having to send the project back to the original decisionmaker for further time-consuming review.

Together, these changes will likely speed up the process by a few months or more. We do all this without eliminating public comment or gutting core parts of the environmental analysis.

In contrast, the House-passed bill would eliminate the requirement that the Forest Service consider alternatives to the proposed project as part of its environmental analysis. In other

words, the Forest Service doesn't have to study other, less damaging ways of undertaking the project—it can just do the project the way it wants.

Many people think that public debate over alternatives is the core of the National Environmental Policy Act. Our bill does not eliminate this important environmental protection.

Another important part of our bill is its protection of magnificent old growth stands. The remaining groves of these trees provide a connection to nature untrammelled by human activity, a connection that many of us cherish.

Our bill would require full protection of these old growth stands. In addition, outside old growth stands, the bill focuses on small-diameter trees and protects large trees that promote fire-resistant stands and species diversity.

By way of contrast, H.R. 1904 provides no protection for these magnificent resources.

Let me now talk about judicial review. No one wants court cases to go on too long. In addition, people should not be able to tie up projects by gaming the system and picking and choosing the friendliest courts to hear their lawsuits.

Our bill addresses these problems. The bill encourages courts, to the maximum extent practicable, to resolve lawsuits over brush-clearing projects quickly. These are important projects for the safety of our communities and our forests, and it is appropriate to give them some priority.

In addition, we require that potential litigants file suit in the same judicial district where a fuels reduction project takes place. No one can game the system by looking for a friendly judge somewhere else.

Finally, we limit temporary injunctions that are typically issued at the outset of a case to 60 days. They can be renewed if necessary—but the challengers to a projects must submit updates explaining why the injunctions should be extended. This provision prevents projects from being held up any longer than is strictly necessary.

These changes will expedite the process—but they still respect our court system's essential autonomy. As a member of the Judiciary Committee, I spend much of my time trying to make sure our court system is as fair as possible.

Americans count on a judiciary independent of the executive branch to preserve their liberties and to right any wrongs that their government commits. I think it is very important that we do not interfere with the independence of our judiciary.

The House-passed bill would require the courts to give weight to certain findings by the Forest Service and the Department of the Interior. Even if projects had been found to violate the environmental laws, courts would be told to give weight to the agencies' findings and allow many of the projects to go ahead anyway.

This is a dangerous provision for a bill to include, and I cannot support it.

I believe our bill includes more sensible provisions on judicial review that will help projects go forward quickly without compromising the independence of our judiciary.

Our bill includes several provisions to address forest health problems on private and State lands.

We authorize \$50 million annually in emergency grants to States and localities where lives are at risk. The last few years have seen vast insect epidemics killing millions of trees in Southern California, Arizona, and elsewhere.

In places like Lake Arrowhead, Big Bear and Idyllwild in Southern California, communities are surrounded by dead and dying trees that are perfect kindling for a catastrophic fire. There is a real threat to people's lives that we must address.

There is now no good funding source for clearing evacuation routes and clearing around schools and other emergency shelters that are on State and private lands. The emergency grants in the bill would authorize funds for these essential purposes.

The bill also includes two measures to encourage homeowners to clear brush around their houses and install non-flammable roofs. A study of Southern California fires by Forest Service researcher Jack Cohen has shown that these measures could reduce a blaze's threat to homes by as much as 85 to 95 percent.

Our bill would encourage these home-saving practices in two ways:

The bill would prioritize grants to those communities that encourage brush-clearing and use of non-flammable roofs or develop comprehensive fire plans.

The bill would record the Sense of Congress that insurers should offer lower premiums to homeowners who take steps to protect their homes.

Our bill would also include grants to encourage the use of woody material, or biomass, for energy production. Biomass-to-energy plants serve multiple beneficial purposes: one, they are a clean and renewable source of energy; and two, they make brush-clearing projects more cost-effective, so we can protect more with the finite Federal dollars available.

Finally, our bill would also include contracting provisions to benefit rural communities. The Forest Service and the Department of the Interior would be required to use "best value contracting" for brush-clearing projects under the Act.

This contracting approach requires the agencies to consider other factors besides the price of the bid in awarding contractors. Bidders would be rewarded for such factors as their commitment to hire local workers, and their past record of environmental stewardship.

I would like to close by saying that this is truly a bipartisan issue. All of us, Democrat and Republican, have an interest in clearing out dangerous accumulations of brush in our national

forests. All of us have an interest as well in protecting the magnificent old growth stands and species habitat that Americans cherish, and in upholding our environmental laws.

I look forward to working with my colleagues on both sides of the aisle to pass a bill as soon as possible.

By Mr. BROWNBACK (for himself and Mr. DEWINE):

S. 1353. A bill to establish new special immigrant categories; to the Committee on the Judiciary.

Mr. BROWNBACK. 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. 1353

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 "Widows and Orphans Act of 2003".

SEC. 2. NEW SPECIAL IMMIGRANT CATEGORY.

(a) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon at the end;

(2) in subparagraph (M), by striking the period at the end and inserting "or"; and

(3) by adding at the end the following:

"(N) subject to subsection (j), an immigrant who is not present in the United States—

"(i) who is—

"(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a minor under 10 years of age (as determined under subsection (j)(5))—

"(aa) for whom no parent or legal guardian is able to provide adequate care;

"(bb) who faces a credible fear of harm related to his or her age;

"(cc) who lacks adequate protection from such harm; and

"(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

"(ii) who is—

"(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a female who has—

"(aa) a credible fear of harm related to her sex; and

"(bb) a lack of adequate protection from such harm."

(b) STATUTORY CONSTRUCTION.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following:

"(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

"(2)(A) No alien who qualifies for a special immigrant visa under subsection

(a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

“(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 10 years or children under the age of 10 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

“(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

“(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under subsection (a)(27)(N), and the Secretary of Homeland Security may waive any other provision of such section (other than paragraph 2(C) or subparagraph (A), (B), (C), or (E) of paragraph (3) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation. The Secretary of Homeland Security shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

“(5) For purposes of subsection (a)(27)(N)(i)(II), a determination of age shall be made using the age of the alien on the date on which the alien was referred to the consular, immigration, or other designated official.

“(6) The Secretary of Homeland Security shall waive any application fee for a special immigrant visa for an alien described in section 101(a)(27)(N).”

(c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—Section 203(b)(4) of the Immigration Nationality Act (8 U.S.C. 1153(b)(4)) is amended by striking “(A) or (B) thereof” and inserting “(A), (B), or (N) thereof”.

(d) EXPEDITED PROCESS.—Not later than 45 days from the date of referral to a consular, immigration, or other designated official as described in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a), special immigrant status shall be adjudicated and, if granted, the alien shall be paroled to the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)) and allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) within 1 year of the alien's arrival in the United States.

(e) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this section, the Secretary of Homeland Security shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the progress of the program, including—

(1) data related to the implementation of this section;

(2) data regarding the number of placements of females and children at risk of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a); and

(3) any other appropriate information that the Secretary of Homeland Security determines to be appropriate.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section and the amendments made by this section.

By Ms. MURKOWSKI (for herself and Mr. STEVENS):

S. 1354. A bill to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, I rise today to reintroduce a bill that passed the Senate with bipartisan support in the 107th Congress. This legislation addresses an equity issue for one of Alaska's rural village corporations.

Cape Fox Corporation is an Alaskan Village Corporation organized pursuant to the Alaska Native Claims Settlement Act, by the Native Village of Saxman, near Ketchikan, AK. As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under Section 16. However, unlike other village corporations, Cape Fox was further restricted from selecting lands within 6 miles of the boundary of the home rule city of Ketchikan. All other ANCSA corporations were restricted from selecting within 2 miles of such a home rule of city.

The 6-mile restriction went beyond protecting Ketchikan's watershed and damaged Cape Fox by preventing the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township, but in surrounding lands far removed from Ketchikan and its watershed. AS a result of the 6-mile restriction, only the mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no economic value, was available for selection by the corporation. Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

Clearly, Cape Fox was placed on unequal economic footing relative to other village corporations in Southeast Alaska. Despite its best efforts during the years since ANCSA was signed into law, Cape Fox has been unable to overcome the disadvantage the law built into its land selection opportunities by this inequitable treatment.

To address this inequity, I have introduced the Cape Fox Land Entitlement Adjustment Act of 2003. This bill will address the Cape Fox problem by providing three interrelated remedies:

(1) The obligation of Cape Fox to select and seek conveyance of the approximately 160 acres of unusable land

in the mountainous northeast corner of Cape Fox's core township will be annulled.

(2) Cape Fox will be allowed to select and the Secretary of the Interior will be directed to convey 99 acres of timber land adjacent to Cape Fox's current holdings on Revilla Island.

(3) Cape Fox and the Secretary of Agriculture will be authorized to enter into an equal value exchange of lands in Southeast Alaska that will be of mutual benefit to the Corporation and the U.S. Forest Service. Lands conveyed to Cape Fox in this exchange will not be timberlands, but will be associated with a mining property containing existing Federal mining claims, some of which are patented. Lands anticipated to be returned to Forest Service ownership will be of wildlife habitat, recreation and watershed values and will consolidate Forest Service holdings in the George Inlet area of Revilla Island.

The land exchange provisions of this bill will help rectify the long-standing inequities associated with restrictions placed on Cape Fox in ANCSA. It will help allow this Native village corporation to make the transition from its major dependence on timber harvest to a more diversified portfolio of income-producing lands.

The bill also provides for the resolution of a long-standing land ownership problem with the Tongass National Forest. The predominant private landowner in the region, Sealaska Corporation, holds the subsurface estate on several thousand acres of National Forest System lands. This split estate poses a management problem which the Forest Service has long sought to resolve. Efforts to address this issue go back more than a decade. Provisions in the Cape Fox Land Entitlement Act of 2003 will allow the agency to consolidate its surface and subsurface estate and greatly enhance its management effectiveness and efficiency in the Tongass National Forest. I urge my colleagues to support this important legislation. 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. 1354

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Cape Fox Land Entitlement Adjustment Act of 2003”.

SEC. 2. FINDINGS.

Congress finds that:

(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) for the Native Village of Saxman.

(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(1) of ANCSA (43 U.S.C. 1621(1)).

(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

(6) As a result of the 6 mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no known economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA (43 U.S.C. 1615(b)).

(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of additional split estate between National Forest System surface lands and Sealaska subsurface lands.

(9) Sealaska is the Alaska native regional corporation for Southeast Alaska, organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(10) There is an additional need to resolve existing areas of Sealaska/Tongass split estate, in which Sealaska holds title or conveyance rights to several thousand acres of subsurface lands that encumber management of Tongass National Forest surface lands.

(11) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve some of the Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

(12) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

SEC. 3. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN LANDS.

Notwithstanding the provisions of section 16(b) of ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be required to select or receive conveyance of approximately 160 acres of Federal unconveyed lands within Section 1, T. 75 S., R. 91 E., C.R.M.

SEC. 4. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

(a) SELECTION AND CONVEYANCE OF SURFACE ESTATE.—In addition to lands made available for selection under ANCSA, within 24 months after the date of enactment of this Act, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

- (1) T. 73 S., R. 90 E., C.R.M.
- (2) Section 33: SW portion of SE $\frac{1}{4}$: 38 acres.
- (3) Section 33: NW portion of SE $\frac{1}{4}$: 13 acres.
- (4) Section 33: SE $\frac{1}{4}$ of SE $\frac{1}{4}$: 40 acres.
- (5) Section 33: SE $\frac{1}{4}$ of SW $\frac{1}{4}$: 8 acres.

(b) CONVEYANCE OF SUBSURFACE ESTATE.—Upon conveyance to Cape Fox of the surface

estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska the subsurface estate to the lands.

(c) TIMING.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

SEC. 5. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the Federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c) and, to the extent necessary, lands and interests therein identified under subsection (d).

(b) LANDS TO BE EXCHANGED TO CAPE FOX.—The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled "Proposed Kensington Project Land Exchange", dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify in writing to the Secretaries of Agriculture and the Interior the lands and interests in lands that Cape Fox proposes to exchange for the Federal lands described in subsection (b). The lands and interests in lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 2,900 acres and designated as parcels A-1 to A-3, B-1 to B-3, and C upon a map entitled "Cape Fox Corporation ANCSA Land Exchange Proposal", dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise. The value of the easement shall be included in determining the total value of lands exchanged to the United States.

(d) VALUATION OF EXCHANGE LANDS.—The Secretary of Agriculture shall determine whether the lands identified by Cape Fox under subsection (c) are equal in value to the lands described in subsection (b). If the lands identified under subsection (c) are determined to have insufficient value to equal the value of the lands described in subsection (b), Cape Fox and the Secretary shall mutually identify additional Cape Fox lands for exchange sufficient to equalize the value of lands conveyed to Cape Fox. Such land shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts.

(e) CONDITIONS.—The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(f) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agree-

ment is signed. Subject only to conveyance from Cape Fox to the United States of all its rights, title and interests in the Cape Fox lands included in the exchange consistent with this title, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the Federal lands included in the exchange within 180 days after the execution of the exchange agreement by Cape Fox and the Secretary of Agriculture.

SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—Upon conveyance of the Cape Fox lands included in the exchange under section 5 and conveyance and relinquishment by Sealaska in accordance with this title of the lands and interests in lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the Federal lands identified for exchange under subsection (b).

(b) LANDS TO BE EXCHANGED TO SEALASKA.—The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled "Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area", dated April 2002 and available for inspection in the Forest Service Region 10 Regional Office in Juneau, Alaska. Within 60 days after receiving notice of the identification by Cape Fox of the exchange lands under section 5(c), Sealaska shall be entitled to identify in writing to the Secretaries of Agriculture and the Interior the lands that Sealaska selects to receive in exchange for the Sealaska lands described in subsection (c). Lands selected by Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 5(b). The Secretary of Agriculture shall determine whether these selected lands are equal in value to the lands described in subsection (c) and may adjust the amount of selected lands in order to reach agreement with Sealaska regarding equal value. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands selected and agreed to by the Secretary but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to be additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2 and 3 lands as set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

(d) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska under subsection (b), to enter into an agreement with Sealaska to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to the Cape Fox and Sealaska conveyances and relinquishments described in subsection (a), the Secretary of the Interior shall complete the interim conveyance to Sealaska of the Federal lands selected for exchange within 180 days after execution of the

agreement by Sealaska and the Secretary of Agriculture.

(e) **MODIFICATION OF AGREEMENT.**—The executed exchange agreement under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102-415 (October 14, 1992).

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) **EQUAL VALUE REQUIREMENT.**—The exchanges described in this Act shall be of equal value. Cape Fox and Sealaska shall have the opportunity to present to the Secretary of Agriculture estimates of value of exchange lands with supporting information.

(b) **TITLE.**—Cape Fox and Sealaska shall convey and provide evidence of title satisfactory to the Secretary of Agriculture for their respective lands to be exchanged to the United States under this Act, subject only to exceptions, reservations and encumbrances in the interim conveyance or patent from the United States or otherwise acceptable to the Secretary of Agriculture.

(c) **HAZARDOUS SUBSTANCES.**—Cape Fox, Sealaska, and the United States each shall not be subject to liability for the presence of any hazardous substance in land or interests in land solely as a result of any conveyance or transfer of the land or interests under this Act.

(d) **EFFECT ON ANCSA SELECTIONS.**—Any conveyance of Federal surface or subsurface lands to Cape Fox or Sealaska under this Act shall be considered, for all purposes, land conveyed pursuant to ANCSA. Nothing in this Act shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA. Cape Fox and Sealaska shall remain charged for any lands they exchange under this Act and any lands conveyed pursuant to section 4, but shall not be charged for any lands received under section 5 or section 6. The exchanges described in this Act shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States under this Act shall become and be administered as part of the Tongass National Forest.

(e) **EFFECT ON STATEHOOD SELECTIONS.**—Lands conveyed to or selected by the State of Alaska under the Alaska Statehood Act (Public Law 85-508; 72 Stat. 339; 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

(f) **MAPS.**—The maps referred to in this Act shall be maintained on file in the Forest Service Region 10 Regional Office in Juneau, Alaska. The acreages cited in this Act are approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

(g) **EASEMENTS.**—Notwithstanding section 17(b) of ANCSA, Federal lands conveyed to Cape Fox or Sealaska pursuant to this Act shall be subject only to the reservation of public easements mutually agreed to and set forth in the exchange agreements executed under this Act. The easements shall include easements necessary for access across the lands conveyed under this Act for use of national forest or other public lands.

(h) **OLD GROWTH RESERVES.**—The Secretary of Agriculture shall add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) **DEPARTMENT OF AGRICULTURE.**—There are authorized to be appropriated to the Sec-

retary of Agriculture such sums as may be necessary for value estimation and related costs of exchanging lands specified in this Act, and for road rehabilitation, habitat and timber stand improvement, including thinning and pruning, on lands acquired by the United States under this Act.

(b) **DEPARTMENT OF THE INTERIOR.**—There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary for land surveys and conveyances pursuant to this Act.

By Mr. AKAKA (for himself, Mr. GRASSLEY, Mr. LEVIN, Mr. LEAHY, and Mr. DURBIN):

S. 1358. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosure of information protected from prohibited personnel practices, require a statement in non-disclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Council, and for other purposes; to the Committee on Governmental Affairs.

Mr. AKAKA. Mr. President, I rise today to discuss the Federal Employee Protection of Disclosures Act. I offered legislation under this title earlier this month. I am modifying that measure, S. 1229, by introducing a new bill today which is cosponsored by Senators GRASSLEY, LEVIN, LEAHY, and DURBIN. This bill, as with S. 1229, amends the Whistleblower Protection Act, WPA. These amendments are necessary to safeguard Federal employees from retaliation and protect American taxpayers from government waste, fraud, and abuse. Our bill follows S. 995 and S. 3070, the latter of which was favorably reported by the Governmental Affairs Committee in the 107th Congress. The bill we introduce today is the result of a bipartisan compromise to protect our federal whistleblowers.

Our bill would codify the repeated and unequivocal statements of congressional intent that Federal employees are to be protected when making "any disclosure" evidencing violations of law, gross mismanagement, or a gross waste of funds. The bill would also clarify the test that must be met to prove that a Federal employee reasonably believed that his or her disclosure was evidence of wrongdoing. The clear language of the WPA says that an employee is protected for disclosing information he or she reasonably believes evidences a violation. However, the Federal Circuit Court of Appeals, which has sole jurisdiction over whistleblower cases, ruled in 1999 that the reasonableness review must begin with the presumption that public officers perform their duties in good faith and that this presumption stands unless there is "irrefragable proof" to the contrary. As irrefragable means impossible to refute, our bill replaces this excessively high burden with the more reasonable standard of substantial evidence.

The measure would also provide independent litigating authority to the Office of Special Counsel, OSC. Under

current law, OSC has no authority to request the Merit Systems Protection Board, MSPB, to reconsider its decision or to seek review of a MSPB decision by the Federal Circuit. The limitation undermines both OSC's ability to protect whistleblowers and the integrity of the WPA. As such, our bill would provide OSC authority to appear in any civil action brought in connection with the WPA and obtain review of any MSPB order where OSC determines MSPB erred and the case will impact the enforcement of the WPA.

Our bill would codify an "anti-gag" provision that Congress has passed annually since 1988 as part of the appropriations process. The yearly appropriations language bars agencies from implementing or enforcing any non-disclosure policy, form, or agreement that does not contain specified language preserving open government statutes. In addition, the bill would make it a prohibited personnel practice to enforce a non-disclosure agreement that does not comply with open government statutes.

Enactment of the Federal Employee Protection of Disclosures Act will strengthen the rights and protections afforded to federal whistleblowers and encourage the disclosure of information vital to an effective government. Following the events of September 11, we realized that whistleblowing is even more important when our national security is at stake. In many instances, the security of our Nation depends upon those who step forward to blow the whistle on significant lapses in our efforts to protect the United States against potential terrorist attacks. Congress should act quickly to assure whistleblowers that disclosing illegal activities and mismanagement within their agencies will not be met with retaliation. I urge my colleagues to join with me in protecting our federal whistleblowers.

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. 1358

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

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) **SHORT TITLE.**—This Act may be cited as the "Federal Employee Protection of Disclosures Act".

(b) **CLARIFICATION OF DISCLOSURES COVERED.**—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking "which the employee or applicant reasonably believes evidences" and inserting "without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of"; and

(B) in clause (i), by striking "a violation" and inserting "any violation";

(2) in subparagraph (B)—

(A) by striking “which the employee or applicant reasonably believes evidences” and inserting “, without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties, to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of”; and

(B) in clause (i), by striking “a violation” and inserting “any violation (other than a violation of this section)”; and

(3) by adding at the end the following:

“(C) a disclosure that—

“(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

“(I) any violation of any law, rule, or regulation;

“(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

“(III) a false statement to Congress on an issue of material fact; and

“(ii) is made to—

“(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

“(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

“(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.”.

(C) COVERED DISCLOSURES.—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking “This subsection” and inserting the following:

“‘This subsection’; and

(2) by adding at the end the following:

“‘In this subsection, the term ‘disclosure’ means a formal or informal communication or transmission.”.

(D) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by adding after the matter following paragraph (12) (as amended by subsection (c) of this section) the following:

“‘For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence.’.”.

(E) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking “and” after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

“(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

“(xii) a suspension, revocation, or other determination relating to a security clearance;

“(xiii) an investigation of an employee or applicant for employment because of any activity protected under this section; and”.

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking “or” at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

“(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement:

“‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.’; or

“(14) conduct, or cause to be conducted, an investigation of an employee or applicant for employment because of any activity protected under this section.”.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

“§ 7702a. Actions relating to security clearances

“(A) in any appeal relating to the suspension, revocation, or other determination relating to a security clearance, the Merit Systems Protection Board or any reviewing court—

“(1) shall determine whether section 2302 was violated;

“(2) may not order the President to restore a security clearance; and

“(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

“(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regards to a security clearance was made in violation of section 2302, the affected agency shall conduct a review of that suspension, revocation, or other determination, giving great weight to the Board or court judgment.

“(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, or other determination was made in violation of section 2302, the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency’s security clearance suspension, revocation, or other determination. A report under this paragraph shall include any proposed agency action with regards to the security clearance.

“(c) An allegation that a security clearance was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel,

the Merit Systems Protection Board, and any reviewing court.”.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

“7702a. Actions relating to security clearances.”.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

“(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or”.

(g) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking “agency involved” and inserting “agency where the prevailing party is employed or has applied for employment”.

(h) DISCIPLINARY ACTION.—Section 1215 of title 5, United States Code, is amended in subsection (a), by striking paragraph (3) and inserting the following:

“(3)(A) A final order of the Board may impose—

“(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

“(ii) an assessment of a civil penalty not to exceed \$1,000; or

“(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

“(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under section 2302(b) (8) or (9), the Board shall impose disciplinary action if the Board finds that the activity protected under section 2302(b) (8) or (9) was a significant motivating factor, even if other factors also motivated the decision, for the employee’s decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.”.

(i) DISCLOSURES TO CONGRESS.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(f) Each agency shall establish a process that provides confidential advice to employees on making a lawful disclosure to Congress of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”.

(j) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.”.

(2) JUDICIAL REVIEW OF MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

“(e)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review obtained by the Special Counsel. The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the court of appeals.”

(k) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b) of title 5, United States Code, is amended by striking paragraph (1) and inserting the following:

“(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

“(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2). Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.”

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703 of title 5,

United States Code, is amended by striking subsection (d) and inserting the following:

“(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board’s decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

“(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board’s decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.”

(l) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: “These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose con-

fidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.”

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(m) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (Public Law 107-296) is amended by adding at the end the following: “For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.”

(n) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

Mr. LEVIN. Mr. President, I am pleased to join Senators AKAKA, GRASSLEY, LEAHY, and DURBIN today in introducing the Federal Employees Protection of Disclosures Act. Our bill strengthens the law protecting employees who blow the whistle on fraud, waste, and abuse in federal programs.

Whistleblowers play a crucial role in ensuring that Congress and the public are aware of serious cases of waste, fraud, and mismanagement in government. Whistleblowing is never more important than when our national security is at stake. Since the terrorist attacks of September 11, 2001, courageous individuals have stepped forward to blow the whistle on significant lapses in our efforts to protect the United States against potential future attacks. Most notably, FBI Agent Coleen Rowley alerted Congress to serious institutional problems at the FBI and their impact on the agency’s ability to effectively investigate and prevent terrorism.

In another example, two Border Patrol agents from my State of Michigan, Mark Hall and Bob Lindemann, risked their careers when they blew the whistle on Border Patrol and INS policies that were compromising security on

the Northern Border. Their disclosure led to my holding a hearing at the Permanent Subcommittee on Investigations in November 2001, that exposed serious deficiencies in the way Border Patrol and INS were dealing with aliens who were arrested while trying to enter the country illegally. Since the hearing, some of the most troublesome policies have been changed, improving the security situation and validating the two agents' concerns. Despite the fact that their concerns proved to be dead on, shortly after they blew the whistle, disciplinary action was proposed against the two agents. Fortunately in this case, whistleblower protections worked. The Office of Special Counsel conducted an investigation and the decision to discipline the agents was reversed. However, that disciplinary action was proposed in the first place is a troubling reminder of how important it is for us to both strengthen protections for whistleblowers and empower the Office of Special Counsel to discipline managers who seek to muzzle employees.

Agent Rowley, Mark Hall and Bob Lindermann are simply the latest in a long line of Federal employees who have taken great personal risks in blowing the whistle on government waste, fraud, and mismanagement. Congress has long recognized the obligation we have to protect a Federal employee when he or she discloses evidence of wrongdoing in a Federal program. If an employee reasonably believes that a fraud or mismanagement is occurring, and that employee has the courage and the sense of responsibility to make that fraud or mismanagement known, it is our duty to protect the employee from any reprisal. We want Federal employees to identify problems so we can fix them, and if they fear reprisal for doing so, then we are not only failing to protect the whistleblower, but we are also failing to protect the taxpayer.

I sponsored the Whistleblower Protection Act in 1989 which strengthened and clarified whistleblower rights, as well as the bill passed by Congress to strengthen the law further in 1994. Unfortunately, however, repeated holdings by the United States Court of Appeals for the Federal Circuit have corrupted the intent of Congress, with the result that additional clarifying language is sorely needed. The case of *LaChance versus White* represents perhaps the most notable example of the Federal Circuit's misinterpretation of the whistleblower law.

In *LaChance*, decided on May 14, 1999, the court imposed an unfounded and virtually unattainable standard on Federal employee whistleblowers in proving their cases. In that case, John E. White was an education specialist for the Air Force who spoke out against a new educational system that purported to mandate quality standards for schools contracting with the Air Force bases. White criticized the new system as counterproductive be-

cause it was too burdensome and seriously reduced the education opportunities available on base. After making these criticisms, local agency officials reassigned White, relieving him of his duties and allegedly isolating him. However, after an independent management review supported White's concerns, the Air Force canceled the program White had criticized. White appealed the reassignment in 1992 and the case has been in litigation ever since.

The administrative judge initially dismissed White's case, finding that his disclosures were not protected by the Whistleblower Protection Act. The MSPB, however, reversed the administrative judge's decision and remanded the case back to the administrative judge, holding that since White disclosed information he reasonably believed evidenced gross mismanagement, this disclosure was protected under the Act. On remand, the administrative judge found that the Air Force had violated the Whistleblower Protection Act and ordered the Air Force to return White to his prior status; the MSPB affirmed the decision of the administrative judge. OPM petitioned the Federal Circuit for a review of the board's decision. The Federal Circuit subsequently reversed the MSPB's decision, holding that there was not adequate evidence to support a violation under the Whistleblower Protection Act. The Federal Circuit held that the evidence that White was a specialist on the subject at issue and aware of the alleged improper activities and that his belief was shared by other employees was not sufficient to meet the "reasonable belief" test in the law. The court held that "the board must look for evidence that it was reasonable to believe that the disclosures revealed misbehavior" by the Air Force. The court went on to say: "In this case, review of the Air Force's policy and implementation via the QES standards might well show them to be entirely appropriate, even if not the best option. Indeed, this review would start out with a presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations. * * * And this presumption stands unless there is 'irrefragable proof to the contrary'."

It was appropriate for the Federal Circuit to remand the case to the MSPB to have it reconsider whether it was reasonable for White to believe that what the Air Force did in this case involved gross mismanagement. However, the Federal Circuit went on to impose a clearly erroneous and excessive standard for him to demonstrate his "reasonable belief"—requiring him to provide "irrefragable" proof that the Air Force had engaged in gross mismanagement.

Irrefragable means "undeniable, incontestable, incontrovertible, incapable of being overthrown." How can a Federal employee meet a standard of "irrefragable" in proving gross mis-

management? It is virtually impossible standard of proof to meet. Moreover, there is nothing in the law or legislative history that even suggests such a standard applies to the Whistleblower Protection Act. The intent of the law is not for a federal employee to act as an investigator and compile "irrefragable" proof that the Federal Government, in fact, committed fraud, waste or abuse. Rather, under the clear language of the statute, the employee needs only to have "a reasonable belief" that there is fraud, waste or abuse occurring in order to make a protected disclosure.

LaChance is only one example of the Federal Circuit misinterpreting the law. Our bill corrects *LaChance* and as well as several other Federal Circuit holdings. In addition, the bill strengthens the Office of Special Counsel and creates additional protections for federal employees who are retaliated against for blowing the whistle.

One of the most important issues addressed in the bill is to clarify again that the law is intended to protect a broad range of whistleblower disclosures. The legislative history supporting the 1994 Whistleblower Protection Act amendments emphasized: "[I]t also is not possible to further clarify the clear language in section 2302(b)(8) that protection for 'any' whistleblowing disclosure truly means 'any'. A protected disclosure may be made as part of an employee's job duties, may concern policy or individual misconduct, and may be oral or written and to any audience inside or outside the agency, without restriction to time, place, motive or content."

Despite this clear Congressional intent that was clearly articulated in 1994, the Federal Circuit has acted to push a number of whistleblower disclosures outside the protections of the whistleblower law. For example, in *Horton versus the Department of the Navy*, the Federal Circuit ruled that a whistleblower's disclosures to co-workers, or to the wrong-doer, or to a court ruled that a whistleblower's disclosures to official in the agency chain of command or those made in the course of normal job duties were not protected. In *Huffman versus Office of Personnel Management*, the Federal Circuit reaffirmed *Horton* and *Willis*. And in *Meuwissen versus Department of Interior*, the Federal Circuit held that a whistleblower's disclosures of previously known information do not qualify as "disclosures" under the WPA. All of these rulings violate clear Congressional intent to afford broad protection to whistleblower disclosures.

In order to make it clear that any lawful disclosure that an employee or job applicant reasonably believes is evidence of waste, fraud, abuse, or gross mismanagement is covered by the WPA, the bill codifies previous statements of Congressional intent. Using the 1994 legislative history, it amends the whistleblower statute to

cover any disclosure of information without restriction to time, place, form, motive or context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties that the employee or applicant reasonably believes is credible evidence of any violation of any law, rule, or regulation, or other misconduct specified in the whistleblower law. I want to emphasize here that, other than the explicitly listed exceptions identified in the statute, we intend for there to be no exceptions, inferred or otherwise, as to what is a protected disclosure. And the prohibition on inferred exceptions is intended to apply to all protected speech categories in section 2302(b)(8) of the law. The intent here, again, is to make it clear that when the WPA speaks of protecting disclosures by Federal employees "any" means "any."

The bill also addresses the clearly erroneous standard established by the Federal Circuit's LaChance decision I mentioned earlier. Rather than needing "irrefragable proof" to overcome the presumption that a public officer performed his or her duties correctly, fairly, in good faith, and in accordance with the law and regulations, the bill makes it clear that the whistleblower can rebut this presumption with "substantial evidence." This burden of proof is a far more reasonable and appropriate standard for whistleblowing cases.

The Federal Circuit's repeated misinterpretations of the whistleblower law are unacceptable and demand Congressional action. In response to the court's inexplicable and inappropriate rulings, our bill would suspend for five years the Federal Circuit's exclusive jurisdiction over whistleblower appeals. It would instead allow a whistleblower to file a petition to review a final order or final decision of the MSPB in the Federal Circuit or in any other United States appellate court of competent jurisdiction and defined under 5 U.S.C. 7703(b)(2). In most cases, using another court would mean going to the federal circuit where the contested personnel action took place. This five year period would allow Congress to evaluate whether other appellate courts would issue whistleblower decisions which are consistent with the Federal Circuit's interpretation of WPA protections and guide Congressional efforts to clarify the law if necessary.

In addition to addressing jurisdictional issues and troublesome Federal Circuit precedents, our bill would also make important additions to the list of protected disclosures. First, it would subject certain disclosures of classified information to whistleblower protections. However, in order for a disclosure of classified information to be protected, the employee would have to possess a reasonable belief that the disclosure was direct and specific evidence of a violation of law, rule or regula-

tion, gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specified danger to public health or safety, or a false statement to Congress on an issue of material fact. A whistleblower must also limit the disclosure to a member of Congress or staff of the executive or legislative branch holding the appropriate security clearance and authorized to receive the information disclosed. Federal agencies covered by the WPA would be required to establish a process to provide confidential advice to employees on how to lawfully make a protected disclosure of classified information to Congress.

Current law permits Federal employees to file a case at the MSPB when they feel that a manager has taken a personnel action against them in retaliation for blowing the whistle. The legislation would add three new personnel actions to the list of adverse actions that cannot be taken against whistleblowers for engaging in protected activity. These actions would include enforcement of any nondisclosure policy, form or agreement against a whistleblower for making a protected disclosure; the suspension, revocation, or other determination relating to a whistleblower's security clearance; and an investigation of an employee or applicant for employment if taken due to their participation in whistleblowing activity.

It is important to note that, if it is demonstrated that a security clearance was suspended or revoked in retaliation for whistleblowing, the legislation limits the relief that the MSPB and reviewing court can order. The bill specifies that the MSPB or reviewing court may issue declaratory and other appropriate relief but may not direct a security clearance to be restored. Appropriate relief may include back pay, an order to reassign the employee, attorney fees, or any other relief the Board or court is authorized to provide for other prohibited personnel practices. In addition, if the Board finds an action on a security clearance to have been illegal, it may bar the agency from directly or indirectly taking any other personnel action based on that illegal security clearance action. Our legislation would also require the agency to review and provide a report to Congress detailing the circumstances of the agency's security clearance decision, and authorizes expedited MSPB review of whistleblower cases where a security clearance was revoked or suspended. The latter is important because a person whose clearance has been suspended or revoked and whose job responsibilities require clearance may be unable to work while their case is being considered.

Our bill would also add two prohibited personnel practices of the whistleblower law. First, it would codify the "anti-gag" provision that has been in force since 1988, by virtue of its inclusion in appropriations bills. Second, it would prohibit a manager from initi-

ating an investigation of an employee or applicant for employment because they engage in a protected activity, including whistleblowing.

Another issue addressed in the bill involves certain employees who are excluded from the WPA. Among these are employees who hold "confidential policy-making positions." In 1994, Congress amended the WPA to keep agencies from designating employees confidential policymakers after the employees filed whistleblower complaints. The WPA also allows the President to exclude from WPA jurisdiction any agency whose principal function is the conduct of foreign intelligence or counterintelligence activities. Our legislation maintains this authority but makes it clear that a decision to exclude an agency from WPA protections must also be made prior to a personnel action being taken against a whistleblower from that agency. This provision is necessary to ensure that agencies cannot argue that employees are exempt from whistleblower protections after an employee files a claim that they were retaliated against.

Another key section of the bill would strengthen the Office of Special Counsel. OSC is the independent federal agency responsible for investigating and prosecuting federal employee complaints of whistleblower retaliation. Current law, however, limits OSC's ability to effectively enforce and defend whistleblower laws. For example, the law provides the OSC with no authority to request the Merit Systems Protection Board to reconsider one of its decisions or to seek appellate review of an MSPB decision. Even when another party petitions for a review of a MSPB decision, OSC is typically denied the right to participate in the proceedings.

Our bill would provide explicit authority for the Office of Special Counsel to appear in any civil action brought in connection with the whistleblower law. In addition, it would authorize OSC to obtain circuit court review of any MSPB order in a whistleblowing case if the OSC determines the Board erred and the case would have a substantial impact on the enforcement of the whistleblower statute. In a letter to me addressing these provisions, special Counsel Elaine Kaplan said, "I believe that these changes are necessary, not only to ensure OSC's effectiveness, but to address continuing concerns about the whittling away of the WPA's protections by narrow judicial interpretations of the law." I ask unanimous consent that the OSC letter be printed in the RECORD.

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

U.S. OFFICE OF SPECIAL COUNSEL,
Washington, DC, September 11, 2002.

Hon. CARL LEVIN,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEVIN: Thank you for giving me the opportunity to comment on the proposed Title VI of H.R. 5005, concerning

the protection of federal employee whistleblowers.

As the head of the U.S. Office of Special Counsel (OSC), the independent federal agency that is responsible for investigating and prosecuting federal employees' complaints of whistleblower retaliation, I share your recognition that is crucial to ensure that the laws protecting whistleblowers are strong and effective. Federal employees are often in the best position to observe and identify official misconduct or malfeasance as well as dangers to the public health and safety, and the national security.

Now, perhaps more than ever before, our national interest demands that federal workers feel safe to come forward to bring appropriate attention to these conditions so that they may be corrected. Further, and again more than ever, the public now needs assurance that the workforce which is carrying out crucial operations is alert, and that its leaders welcome and encourage their constructive participation in making the government a highly efficient and effective steward of the public interest.

To these ends, Title VI contains a number of provisions that will strengthen the Whistleblower Protection Act (WPA) and close loopholes in the Act's coverage. The amendment would reverse the effects of several judicial decisions that have imposed unduly narrow and restrictive tests for determining whether employees qualify for the protection of the WPA. These decisions, among other things, have held that employees are not protected against retaliation when they make their disclosures in the line of duty or when they confront subject officials with their suspicions of wrongdoing. They have also made it more difficult for whistleblowers to secure the Act's protection by interposing what the Court of Appeals for the Federal Circuit has called an "irrefragable" presumption that government officials perform their duties lawfully and in good faith.

In addition to reversing these rulings, Title VI would grant the Special Counsel independent litigating authority and the right to request judicial review of decisions of the Merit Systems Protection Board (MSPB) in cases that will have a substantial impact upon the enforcement of the WPA. I firmly believe that these changes are necessary, not only to ensure OSC's effectiveness, but to address continuing concerns about the whittling away of the WPA's protections by narrow judicial interpretations of the law. The changes would ensure that OSC, the government agency charged with protecting whistleblowers, will have a meaningful opportunity to participate in the shaping of the law.

Further, Title VI would strengthen OSC's capacity to use its disciplinary action authority to deter agency supervisors, managers, and other officials from engaging in retaliation, and to punish those who do so. The amendment does this in two ways. First, it clarifies the burden of proof in disciplinary action cases that OSC brings by employing the test first set forth by the Supreme Court in *Mt. Healthy School District v. Board of Education*. Under this test, in order to secure discipline of an agency official accused of engaging in whistleblower retaliation, OSC would have to show that protected whistleblowing was a "significant, motivating factor" in the decision to take or threaten to take a personnel action. If OSC made such a showing, the MSPB would order appropriate discipline unless the official showed, by preponderant evidence, that he or she would have taken or threatened to take the same action even had there been no protected activity.

This change is necessary in order to ensure that the burden of proof in these cases is not

so onerous as to make it virtually impossible to secure discipline against retaliators. Under current law, OSC bears the unprecedented burden of demonstrating that protected activity was the but-for cause of an adverse personnel action against a whistleblower. The amendment would correct the imbalance by imposing the well-established *Mt. Healthy* test in these cases.

In addition, the bill would relieve OSC of attorney fee liability in disciplinary action cases in which it ultimately does not prevail. The amendment would shift liability for fees to the manager's employing agency, where an award of fees would be in the interest of justice. The employing agency would indemnify the manager for these costs which would have been incurred by him in the course of performing his official duties.

Under current law, if OSC ultimately does not prevail in a case it brings against a manager whom our investigation shows has engaged in retaliation, then we must pay attorney fees, even if our prosecution decision was an entirely reasonable one. For a small agency like OSC, with a limited budget, the specter of having to pay large attorney fee awards simply because we do not ultimately prevail in a case, is a significant obstacle to our ability to use this important authority to hold managers accountable. It is, moreover, an unprecedented burden; virtually all fee shifting provisions which could result in an award of fees against a government agency, depend upon a showing that the government agency has acted unreasonably or in bad faith.

In addition to these provisions, the bill would also provide that for a period of five years, beginning on February 1, 2003, there would be multi-circuit review of decisions of the MSPB, just as there is now multi-circuit review of decisions of the MSPB's sister agency, the Federal Labor Relations Authority. This experiment will give Congress the opportunity to judge whether providing broader perspectives of all of the nation's courts of appeals will enhance the development of the law under the WPA.

There are several other provisions of the amendments that would strengthen the Act's coverage and remedies. The amendments, for example, would extend coverage of the WPA to circumstances in which an agency initiated an investigation of an employee or applicant in reprisal for whistleblowing or where an agency implemented an illegal non-disclosure form or policy. The amendments also would authorize an award of compensatory damages in federal employee whistleblower cases. Such awards are authorized for federal employees under the civil rights acts, and for environmental and nuclear whistleblowers, among others, under other federal statutes. Given the important public policies underlying the WPA, it seems appropriate that the same sort of make whole relief should be available to federal employee whistleblowers.

Finally, Title VI contains a provision that would provide relief to employees who allege that their security clearances were denied or revoked because of protected whistleblowing, without interfering with the longstanding authority of the President to make security clearance determinations. The amendment would allow employees to file OSC complaints alleging they suffered a retaliatory adverse security clearance determination. OSC would be given the authority to investigate such complaints and the MSPB would have the authority to issue declaratory and appropriate relief other than ordering the restoration of the clearance. Further, where the Board found retaliation, the employing agency would be required to conduct its own investigation of the revocation and report back to Congress.

This amendment provides a balance resolution of the tension between protecting national security whistleblowers against retaliation and maintaining the President's traditional prerogative to decide who will have access to classified information. Especially in light of the current heightened concerns about issues of national security, this change in the law is clearly warranted.

Thank you again for providing me with an opportunity to comment on these amendments, and for your continuing interest in the work of the Office of Special Counsel.

Sincerely,

ELAINE KAPLAN.

Mr. LEVIN. OSC currently has the authority to pursue disciplinary action against managers who retaliate against whistleblowers. However, Federal Circuit decisions, like *LaChance*, have undermined the agency's ability to successfully pursue such cases. The Special Counsel has said that "change is necessary in order to ensure that the burden of proof in these cases is not so onerous as to make it virtually impossible to secure disciplinary action against retaliators." In addition to it being difficult to win, if the OSC loses a disciplinary case, it has to pay the legal fees of those against whom OSC initiates disciplinary action. In its letter, OSC said that "the specter of having to pay large attorney fee awards . . . is a significant obstacle to our ability to use this important authority to hold managers accountable." Our bill addresses these problems by establishing a reasonable burden of proof for disciplinary actions and requiring the employing agency, not the OSC, to reimburse the prevailing party for attorney fees in a disciplinary proceeding.

Finally, the bill addresses a new issue that has arisen in connection with the recent enactment of the Homeland Security Act or HSA. To evaluate the vulnerability to terrorist attack of certain critical infrastructure such as chemical plants, computer networks and other key facilities, the HSA asks private companies that own these facilities to submit unclassified information about them to the government. In doing so, the law also created some ambiguity on the question of whether Federal employee whistleblowers would be protected by the WPA if they should disclose information that has been independently obtained by the whistleblower about such facilities but which may also have been disclosed to the government under the critical infrastructure information program.

While I believe it was Congress's intent to extend whistleblower protections to Federal employees who disclose such independently obtained information, the law's ambiguities are troublesome in the context of the tendency of the Federal Circuit to narrowly construe the scope of protections afforded by the WPA. Our bill would thus clarify that whistleblower protections do extend to Federal employees who disclose independently obtained information that may also have been disclosed to the government as part of the

critical infrastructure information program

We need to encourage Federal employees to blow the whistle on waste, fraud and abuse in Federal Government agencies and programs. These people take great risks and often face enormous obstacles in doing what they believe is right. The Congress and the country owe a particular debt of gratitude to those whistleblowers who put their careers on the line to protect national security. Since September 11, 2001, we have seen a number of examples of how crucial people like Coleen Rowley, Mark Hall and Bob Lindermann are to keeping our country safe. I request unanimous consent that a letter from Agent Rowley be printed in the RECORD. In the letter she says that when she blew the whistle, she was lucky enough to garner the support of many of her colleagues and members of Congress. However, her letter warns that for every Coleen Rowley, "there are many more who do not benefit from the relative safety of public notoriety." It is to protect those responsible, courageous many that we offer this legislation. We need more like them.

I ask unanimous consent to print in the RECORD a section-by-section explanation of the bill.

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

SEPTEMBER 2, 2002.

DEAR SENATORS: I have proudly served in federal law enforcement for over 21 years. Prior to my personal involvement in a specific matter, I did not fully appreciate the strong disincentives that sometimes keep government employees from exposing waste, fraud, abuse, or other failures they witness on the job. Nor did I appreciate the strong incentives that do exist for agencies to avoid institutional embarrassment.

The decision to step forward with information that exposed my agency to scrutiny was one of the most difficult of my career. I did not come to it quickly or lightly. I first attempted to warn my superiors through regular channels. Only after those warnings failed to bring about the necessary response and congressional inquiry was initiated, did I go outside the agency with my concerns. I had no intention or desire to be in the public spotlight, so I did not go to the news media. I provided the information to Members of Congress with oversight responsibility. I felt compelled to do so because my responsibility is to the American people, not to a government agency.

Unfortunately, the cloak of secrecy which is necessary for the effective operation of government agencies involved in national security and criminal investigations fosters an environment where the incentives to avoid embarrassment and the disincentives to step forward combine. When that happens, the public loses. We need laws that strike a better balance, that are able to protect effective government operation without sacrificing accountability to the public. I was lucky enough to garner a good deal of support from my colleagues in the Minneapolis office and Members of Congress. But for every one like me, there are many more who do not benefit from the relative safety of public notoriety. They need credible, functioning rights and remedies to retain the freedom to warn.

I also need to state that I write this letter in my personal capacity, and that it reflects

my personal views only, not those of the government agency for which I work.

Thank you for your consideration,

COLEEN ROWLEY.

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

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

The Federal Employee Protection of Disclosures Act would strengthen protections for Federal employees who blow the whistle on waste, fraud and abuse in the Federal Government.

Protected Whistleblower Disclosures.—To correct court decisions improperly limiting the disclosures protected by the Whistleblower Protection Act, WPA, section (b) of the bill would clarify Congressional intent that the law covers "any" whistleblowing disclosure, whether that disclosure is made as part of an employee's job duties, concerns policy or individual misconduct, is oral or written, or is made to any audience inside or outside an agency, and without restriction to time, place, motive or context. This section would also protect certain disclosures of classified information to Congress when the disclosure is to a Member or legislative staff holding an appropriate security clearance and authorized to receive the type of information disclosed.

Informal Disclosures.—Section (c) would clarify the definition of "disclosure" to include a formal or informal communication or transmission.

Irrefragable Proof.—In *LaChance v. White*, the U.S. Court of Appeals for the Federal Circuit imposed an erroneous standard for determining when an employee makes a protected disclosure under the WPA. Under the clear language of the statute, an employee need only have a reasonable belief that he or she is providing evidence of fraud, waste or abuse to make a protected disclosure. But the court ruled that an employee had to have "irrefragable proof"—meaning undeniable and incontestable proof—to overcome the presumption that a public officer is performing their duties in accordance with law. Section (d) would replace this unreasonable standard of proof by providing that a whistleblower can rebut the presumption with "substantial evidence."

Prohibited Personnel Actions.—Section (e)(1) would add three actions to the list of prohibited personnel actions that may not be taken against whistleblowers for protected disclosures: enforcement of a nondisclosure policy, form or agreement; suspension, revocation, or other determination relating to an employee's security clearance; and investigation of an employee or applicant for employment due to protected whistleblowing activities.

Nondisclosure Actions Against Whistleblowers.—Section (e)(2) would bar agencies from implementing or enforcing against whistleblowers any nondisclosure policy, form or agreement that fails to contain specified language preserving the right of federal employees to disclose certain protected information. It would also prohibit a manager from initiating an investigation of an employee or applicant for employment because they engaged in protected activity.

Retaliations Involving Security Clearances.—Section (e)(3) would make it a prohibited personnel practice for a manager to suspend, revoke or take other action with respect to an employee's security clearance in retaliation for whistleblowing. This section would also authorize the Merit Systems Protection Board, MSPB, to conduct an expedited review of such matters and issue declaratory and other appropriate relief, but

would not empower MSPB to restore a security clearance. If MSPB or a reviewing court were to find that a security clearance decision was retaliatory, the agency involved would be required to review its security clearance decision and issue a report to Congress explaining it.

Exclusions From WPA.—Current law allows the President to exclude certain employees and agencies from the WPA if they perform certain intelligence related or policy making functions. In 1994, Congress amended the WPA to stop agencies from removing employees from WPA coverage after the employees filed whistleblower complaints. Section (f) would also require that removal of an agency from the WPA be made prior to a personnel action being taken against a whistleblower at that agency.

Attorney Fees.—The Office of Special Counsel, OSC, has authority to pursue disciplinary action against managers who retaliate against whistleblowers. Currently, if OSC loses a disciplinary case, it must pay the legal fees of those against whom it initiated the action. Because the amounts involved could significantly deplete OSC's limited resources, section (g) would require the employing agency, rather than OSC, to reimburse the manager's attorney fees.

Burden of Proof in Disciplinary Actions.—Currently, when OSC pursues disciplinary action against managers who retaliate against whistleblowers, OSC must demonstrate that an adverse personnel action would not have occurred "but for" the whistleblower's protected activity. Section (i) would establish a more reasonable burden of proof by requiring OSC to demonstrate that the whistleblower's protected disclosure was a "significant motivating factor" in the decision by the manager to take the adverse action, even if other factors also motivated the decision. This standard would be equivalent of the Mt. Healthy standard.

Disclosures to Congress.—Section (j) would require agencies to establish a process to provide confidential advice to employees on how to lawfully make a protected disclosure of classified information to Congress.

Authority of Special Counsel.—Under current law, OSC has no authority to request MSPB to reconsider a decision or seek appellate review of a MSPB decision. This limitation undermines OSC's ability to protect whistleblowers and integrity of the WPA. Section k would authorize OSC to appear in any civil action brought in connection with the WPA and request appellate review of any MSPB order where OSC determines MSPB erred and the case would have a substantial impact on WPA enforcement.

Judicial Review.—In 1982, Congress replaced normal Administrative Procedures Act appellate review of MSPB decisions with exclusive jurisdiction in the U.S. Court of Appeals for the Federal Circuit. While the 1989 WPA and its 1994 amendments strengthened and clarified whistleblower protections, Federal Circuit holdings have repeatedly misinterpreted key provisions of the law. Subject to a five year sunset, section (l) would suspend the Federal Circuit's exclusive jurisdiction over whistleblower appeals and allow petitions for review to be filed either in the Federal Circuit or any other federal circuit court of competent jurisdiction.

Nondisclosure Restrictions on Whistleblowers.—Section (m) would require all federal nondisclosure policies, forms and agreements to contain specified language preserving the right of federal employees to disclose certain protected information. This section would codify the so-called anti-gag provision that has been included in federal appropriations bills since 1988.

Critical Infrastructure Information.—Section (n) would clarify that section 214(c) of

the Homeland Security Act, HSA, maintains existing WPA rights for independently obtained information that may also qualify as critical infrastructure information under the HSA.

By Mrs. BOXER:

S. 1359. A bill to allow credit unions to provide international money transfer services and to require disclosures in connection with international money transfers from all money transmitting service providers; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. BOXER. Mr. President, today, I am introducing the International Remittances Services Enhancement and Protection Act of 2003.

Remittances are the funds that immigrants send to their families abroad to help those relatives meet their basic needs. In the Latino community, 47 percent of all Latinos born outside the United States regularly send money to their country of origin. But since 43 percent to 58 percent of those who send remittances abroad regularly do not have a bank account, much of their hard earned money is lost in fees paid to check cashing agencies and wire transfer companies. They rely on check cashing services to cash their paychecks at hefty fees and then pay another fee to send some portion of that money through a wire service to their relatives in Latin America and elsewhere at varying exchange rates.

This legislation will increase competition and transparency in the remittances market. It will provide immigrants with access to more choices for sending remittances by allowing credit unions to provide wire transfer and check cashing services to nonmembers. It will also provide immigrants with access to information in more than one language from all money transmitters about the fees and exchange rates that they pay. That information will make it easier for consumers to compare the value of the services they can receive from different service providers.

The larger goal is to provide immigrants with more control over their finances. I believe this bill will encourage financial institutions to develop better services for immigrants and build stronger relationships with immigrant communities.

According to the Multilateral Investment Fund, immigrants living in the United States sent \$23 billion to Latin America in 2001. More than \$3 billion of that total was consumed in fees paid to money transfer agencies. If current growth rates in remittance transfers are maintained, cumulative remittances to Latin America could reach \$300 billion for the 10-year period ending in 2010. We need to work to ensure that competition in the market and modern technology come together to lower the portion of those monies lost in fees and instead are used for productive purposes.

By Mr. GRAHAM of Florida:

S. 1360. A bill to amend section 7105 of title 38, United States Code, to clar-

ify the requirements for notices of disagreement for appellate review of Department of Veterans Affairs activities; to the Committee on Veterans' Affairs.

Mr. GRAHAM of Florida. Mr. President, I rise today to introduce legislation that will remove a significant and arbitrary barrier to appellate review of veterans' benefits claims. In 1988, when Congress created judicial review for veterans' claims it intended to provide "an opportunity for those aggrieved by VA decisions to have such decisions reviewed by a court" and found such review "necessary in order to provide such claimants with fundamental justice."

A veteran or survivor of a veteran seeking VA benefits must file a claim for such benefits, generally at a VA Regional Office. If the VA denies the claim for benefits, the claimant must file a "Notice of Disagreement," or NOD, as defined in section 7105 of title 38 of the United States Code. This NOD initiates appellate review by the agency and begins a series of events where VA communicates the basis of the denial to the claimant and allows various levels of review of this denial at the regional office. If the claimant still disagrees with the VA decision, the claimant may file a "Substantive Appeal" that vests jurisdiction of the claim with the Board of Veterans' Appeals, the appellate arm of VA.

Section 7105 defines what is required of a valid NOD. It must be filed within 1 year from the notice of the initial denial, in writing, and filed with the regional office that issued the decision over which there is disagreement. The NOD may be filed by the claimant or the claimant's guardian or representative.

VA has promulgated regulations to implement section 7105. In Section 20.201 or title 38 of the Code of Federal Regulations, the Secretary defined a NOD to not require special wording. The regulation does require that the NOD "must be in terms which can be reasonably construed as disagreement with the determination and a desire for appellate review." The second component of that sentence—"a desire for appellate review"—is not required under the statute.

In 1997, Raymond Gallegos, a veteran, again filed an application for service connection for post-traumatic stress disorder that had been previously denied. The VA regional office granted his claim. However, Mr. Gallegos believed the effective date assigned to his claim was wrong and filed what was then thought to be a NOD. He appealed this issue to the Board, which reasoned that the letter expressing his disagreement was not a valid NOD because it did not express his desire for appellate review. Mr. Gallegos appealed the Board's determination to the United States Court of Appeals for Veterans Claims, or the CAVC.

In 2000, the CAVC determined in *Gallegos v. Gober* that the VA regula-

tion was invalid because it required more of the claimant than Congress required in statute. Last year, in *Gallegos v. Principi*, the United States Court of Appeals for the Federal Circuit reversed the CAVC and upheld the VA regulation, finding that the agency interpretation was entitled to deference because Congressional intent was not clear in limiting the requirements of a NOD to those in section 7105.

Congress never intended to require that level of formality from veterans, in this uniquely pro-claimant system. Therefore, I offer legislation that would specify that if a claimant's filing meets the criteria defined in section 7105 of title 38 of the United States Code, the document will be deemed a Notice of Disagreements with all the rights and procedures that accompany that determination. It will also ensure that claimants whose NODs were found to be defective since the court decision will have the opportunity to have their NOD reevaluated under this new provision.

This is very significant because there are two key consequences of not having a valid, timely NOD. First, if a claimant fails to file a timely, valid NOD, the VA denial becomes final. The claimant will need to submit "new and material evidence" that VA erred in order to reopen the case. If successful, the claimant will only be able to receive benefits dating to the beginning of the newly reopened claim, potentially losing years of retroactive benefits. This may affect a veteran's ability to receive VA health care, a dependent's ability to use educational benefits, and all the other benefits that flow from a finding of service-connection.

Second, if a claimant has not been deemed to file a NOD, there can be no appeal of the VA decision. A NOD is required to initiate an appeal. It is a prerequisite to review by the Board of Veterans' Appeals and ultimately judicial review at the CAVC. This contravenes Congress's intent to remove arbitrary barriers to judicial review as it did in Public Law 107-103.

We face the tragic fact that in 2002, America lost 646,264 veterans. The many aging veterans who still await justice cannot afford this debate. I ask my colleagues to support this critical measure and restore this fundamental justice to our veterans.

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. 1360

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

SECTION 1. CLARIFICATION OF NOTICE OF DISAGREEMENT FOR APPELLATE REVIEW OF DEPARTMENT OF VETERANS AFFAIRS ACTIVITIES.

(a) CLARIFICATION.—Section 7105(b) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(3) A document that meets the requirements of the second sentence of paragraph (1) and the first sentence of paragraph (2) shall be recognized as a notice of disagreement for purposes of this section.”.

(b) EFFECTIVE DATE.—(1) Except as specifically provided otherwise, paragraph (3) of section 7105(b) of title 38, United States Code (as added by subsection (a) of this section), shall apply to any document—

(A) filed under section 7105 of such title on or after the date of the enactment of this Act; or

(B) filed under section 7105 of such title before the date of the enactment of this Act and not rejected by the Secretary of Veterans Affairs as a notice of disagreement pursuant to section 20.201 of title 38, Code of Federal Regulations, as of that date.

(2) In the case of a document described in paragraph (3) of this subsection, the Secretary shall, upon the request of the claimant or the Secretary's own motion, order the document treated as a notice of disagreement under section 7105 of such title as if the document had not been rejected by the Secretary as a notice of disagreement pursuant to section 20.201 of title 38, Code of Federal Regulations.

(3) A document described in this paragraph is a document that—

(A) was filed as a notice of disagreement under section 7105 of such title during the period beginning on March 15, 2002, and ending on the date of the enactment of this Act; and

(B) was rejected by the Secretary as a notice of disagreement pursuant to section 20.201 of title 38, Code of Federal Regulations.

(4) A document may not be treated as a notice of disagreement under paragraph (2) unless a request for such treatment is filed by the claimant, or a motion is made by the Secretary, not later than one year after the date of the enactment of this Act.

By Mr. SMITH:

S. 1361. A bill to amend the Internal Revenue Code of 1986 to provide that foreign base company shipping income shall include only income from aircraft and income from certain vessels transporting petroleum and related products; to the Committee on Finance.

Mr. SMITH of Oregon. Mr. President, today I am introducing legislation which would deal with a real problem facing our Nation, the decline of our U.S.-owned shipping fleet. A U.S. owned shipping fleet is essential as a matter of national and economic security. My bill would help make U.S. based shipping companies more competitive in the global market.

This is important to our country and to my state. Oregon plays a key role as a facilitator of international commerce. The Port of Portland is one of the most active ports in the world. It is a key link for trade between the United States and the Pacific Rim. In addition to its key role enabling global commerce, Portland is home to U.S. owned shipping companies, shipyards, and numerous support businesses.

As a result of tax-law changes enacted in 1975 and 1986, U.S. shipping companies must pay tax on income earned by subsidiaries overseas immediately rather than when such income is later brought back to the United States. This treatment represents a sharp departure from the generally ap-

plicable income tax principle of “deferral” and places U.S.-based owners of international fleets at a distinct tax disadvantage compared to their foreign-based competitors.

Controlled foreign corporations engaged in ocean transport are one of the only active businesses that are not eligible for general rule of deferral. My bill would amend the Internal Revenue Code to allow U.S. companies that own foreign-flagged ships to treat income earned by their controlled foreign corporations in the same manner as all other U.S. companies. In short, it would allow American shipping companies to defer the payment of tax on income that they derive from shipping activities outside the United States until that income is repatriated to the United States.

Most foreign-based carriers pay no home-country taxes on income they earn abroad from international shipping. As a result of this competitive imbalance, U.S. companies now hold precious little share of the world shipping marketplace. Indeed, U.S. ownership of international shipping trades dropped precipitously in the aftermath of the 1975 and 1986 tax-law changes. Before 1975, the U.S.-owned share of the world's open-registry shipping fleet stood at 26 percent. By 1986, the U.S. share had dropped to 14 percent. By 1996, the U.S. share had dropped to 5 percent.

Other security concerns also are raised by the decline in U.S. ownership of the international shipping trade. The U.S. military, in times of emergency, relies on the ability to requisition U.S.-owned foreign-flagged tankers, bulk carriers, and other vessels to carry oil, gasoline, and other materials in defense of U.S. interests overseas. These vessels comprise the Effective United States Control, EUSC, fleet. The sharp decline in the EUSC fleet since the 1975 and 1986 tax-law changes, and the resulting adverse strategic consequences, have been confirmed in a recent MIT study conducted for the Navy Department. The study recommended that in the short term, the most practical and cost-effective means of reversing this trend would be to “revise legislation to reflect tax deferral of income for some or all EUSC vessels.”

U.S. security also depends in no small part on our ability to maintain adequate domestic oil supplies in times of emergency. The United States consumes approximately 19.6 million barrels of oil per day, of which roughly 55 percent, mostly crude, is imported into the United States. It is estimated that 95 percent of all oil imported into the United States by sea is now imported on foreign-owned tankers. This means that one half of every gallon of oil consumed in the United States is carried on foreign-owned vessels. This growing dependence on foreign parties—who may not be sympathetic to U.S. interests—to deliver our oil in times of global crisis is cause for potential alarm. In

recent years, two of the largest American shipping companies have been purchased by foreign companies, thereby making their shipping operations more competitive than the remaining American companies.

The time has come for us to make changes in the tax law that will allow our domestic companies to compete fairly in the global marketplace. I urge my colleagues to join me to enact this needed legislation. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1361

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 “RAFT (Restore Access to Foreign Trade) Act of 2003”.

SEC. 2. ELIMINATION OF MOST VESSEL SHIPPING INCOME FROM FOREIGN BASE COMPANY INCOME.

(a) FOREIGN BASE COMPANY SHIPPING INCOME TO INCLUDE ONLY INCOME FROM AIRCRAFT AND PETROLEUM VESSELS.—Subsection (f) of section 954 of the Internal Revenue Code of 1986 (relating to foreign base company income) is amended—

(1) by inserting “petroleum” before “vessel” each place it appears, and

(2) by adding at the end the following new sentence: “For purposes of this subsection, the term ‘petroleum vessel’ means any vessel engaged in the carriage of petroleum or related products or byproducts if the controlled group (as defined in section 267(f)(1) without regard to section 1563(b)(2)(C)) of which the taxpayer is a member is engaged principally in the trade or business of exploring for, or extracting, refining or marketing of, petroleum or related products or byproducts.”.

(b) RETENTION OF SEPARATE FOREIGN TAX CREDIT BASKET FOR ALL SHIPPING INCOME.—Subparagraph (D) of section 904(d)(2) of the Internal Revenue Code of 1986 is amended by striking “(as defined in section 954(f))” and inserting “, as defined in section 954(f), if references in such section to petroleum vessels included references to all vessels”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2002, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986) within which or with which such taxable years of such foreign corporations end.

By Mrs. BOXER:

S. 1362. A bill to authorize the Port Passenger Accelerated Service System (Port PASS) as a permanent program for land border inspection under the Immigration and Nationality Act, and for other purposes; to the Committee on the Judiciary.

Mrs. BOXER. Mr. President, today, I am introducing legislation that will strengthen national security, promote commerce, and provide assistance to our dedicated agents at the border.

Thousands of San Diego and Tijuana residents cross the border every day as commuters, shoppers, or visitors. Unfortunately, our border infrastructure has not kept pace with the increasing

traffic volume, and travelers frequently encounter delays and congestion at the border.

The tragic events of September 11 further intensified these challenges along the border. Increased security measures severely over-extended inspection resources and resulted in longer waiting times for crossing the border.

The Secure Electronic Network for Travelers' Rapid Inspection, SENTRI, program was created to help alleviate the congestion at the border.

SENTRI is a dedicated commuter lane program. It allows pre-screened travelers to move quickly through the inspection process at the United States-Mexican border. After participants pass a background check, they can move more quickly through a dedicated lane.

SENTRI accepts only travelers who pass both an extensive background check to verify their eligibility and a thorough inspection of their vehicle.

Delays at crossing the border were often an hour or more prior to SENTRI But, with the program, the delays for participants are 5 to 15 minutes. Travelers in other lanes also benefit because the prescreened SENTRI crossers move swiftly through the border, reducing the number of motorists using general commuter lanes.

Expediting inspections through SENTRI is actually helping to improve border security, as Customs and Border Patrol agents can focus more attention on nonscreened drivers and passengers.

Unfortunately, SENTRI has become a victim of its own success. SENTRI needs a greater investment of resources to keep up with the current and future demand. Enrollment increased by more than 100 percent after September 11. Currently, prospective applicants must wait approximately 8 months to participate in the program.

For innovative programs, such as SENTRI, to work, we must provide them with the tools and resources they need to succeed. This is why I am introducing the Secure and Fast Entry at the Border Act or SAFE Border Act.

The SAFE Border Act recognizes the contribution of SENTRI to border security and the agents who administer the program. My bill would extend the length of a SENTRI pass from 1 to 2 years—enabling border agents to process more new applicants and reduce the current enrollment wait. The SAFE Border Act also recommends the appointment of dedicated SENTRI staff to expedite application processing, and encourages the creation of a dedicated commuter lane for prescreened, low-risk pedestrian crossers.

In addition, to ensure security at our borders, my legislation bans a person convicted of a felony or under active criminal investigation from participating in the program.

Our agents at the border shoulder an enormous responsibility every day. I believe we owe them the appropriate resources and support they need to carry out their duties.

Our Nation's economic and overall security is heavily linked to smooth and secure border crossings. The SAFE Border Act provides a way for trusted travelers to cross the border securely and quickly.

By Mr. REID:

S. 1363. A bill to prohibit the study or implementation of any plan to privatize, divest, or transfer any part of the mission, function, or responsibility of the National Park Service; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, as thousands of families look forward to summer vacations at our beautiful national parks, we must address an issue that could one day ruin their experience: privatization of the National Park Service.

The Park Service has worked hard to preserve Nevada's unique landscapes at the Great Basin National Park, Death Valley, and Lake Mead National Recreation Area. Instead of applauding the Park Service for a job well done, the Administration wants to study 1,800 jobs in the Park Service for privatization.

Many of these Park Service jobs have direct contact with visitors to our parks. They not only collect fees and maintain parks but also give directions, fight wildfires when necessary, and provide emergency medical assistance to injured park visitors. They are not required to do these things; they are driven by a love for the parks and a commitment to public service that contractors lack.

Privatizing the Park Service would jeopardize our national parks. Members of the Park Service have a career-long interest in maintaining the parks and perform their jobs because they are dedicated to serving the public. They often go beyond the call of duty to fix a problem in the middle of the night or change a tire for an unlucky park visitor. Can we be sure that a contractor would do the same? No.

In addition, the Park Service receives tens of thousands of hours of volunteer work every year. At the Lake Mead National Recreation Area alone, volunteers provided 92,000 hours of work, the equivalent of 44 full-time employees. Will a contractor find volunteers to provide it with 92,000 hours of assistance. Not likely.

Privatization will waste taxpayer money. Privatization studies cost about \$3,000 per position studied, and privatization does not save money.

Nevadans visiting the national parks this summer want members of the Park Service, not profit-minded corporations, enriching their experience by directing them to the famous sites and best kept secrets of our parks.

I oppose privatizing the Park Service because it would hurt Nevadans, endanger our national parks, and waste taxpayer money.

This bill will keep our dedicated Park Service members running our na-

tional parks. It stops costly privatization studies and redirects the funds to address the maintenance backlog that President Bush promised to eliminate.

I am committed to protecting our parks, and I am proud to introduce this bill that will ensure that the Park Service can preserve them for generations to come.

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. 1363

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

SECTION 1. PARK PROFESSIONALS PROTECTION.

(a) SHORT TITLE.—This Act may be cited as the "Park Professionals Protection Act".

(b) FINDINGS.—Congress finds the following:

(1) The National Park System is recognized throughout the world as a model for the conservation and enjoyment of natural, scenic, recreational, cultural, and historic resources.

(2) The National Park System would never have achieved such status, nor could the system maintain such status, without the professionalism, dedication, and passion of the men and women of the National Park Service.

(3) Current plans to privatize thousands of jobs within the National Park Service ignore the unique contributions made by the men and women of the National Park Service and threaten to undermine the entire National Park System.

(4) Scarce park operations and maintenance resources are being diverted to pay private consultants to study the current privatization scheme. According to the National Park Service, these studies cost approximately \$3000 for each position proposed to be privatized.

(5) Despite the millions of taxpayer dollars diverted to these studies, not a single report has been published documenting any cost savings to be generated by the privatization of park operations.

(6) The current privatization scheme raises serious questions regarding the ability of temporary workers, provided by the lowest bidder, to adequately fulfill the responsibilities of professional National Park Service employees in the areas of conservation, interpretation, emergency fire and rescue, and homeland security.

(7) The current privatization scheme appears to affect minority employees disproportionately, threatening to significantly reduce the number of minority employees within the National Park Service.

(8) Pendency of the current privatization scheme is having detrimental impacts on the morale of current employees and is discouraging high quality candidates from applying for positions within the National Park Service.

(c) PROHIBITION.—Notwithstanding any other provision of law, the Secretary is prohibited from studying or implementing any plan to privatize, divest, or transfer any part of what is, as of the date of the enactment of this section, the mission, function, or responsibility of the National Park Service.

(d) REALLOCATION OF FUNDS.—Notwithstanding any other provision of law, the Secretary shall withhold any funds currently dedicated to the activities prohibited under subsection (c) and shall reallocate those funds to the operations and maintenance accounts within the National Park Service.

(e) NO EFFECT ON CERTAIN PLANS.—Nothing in this section shall affect the authority, as of the date of the enactment of this section, of a National Park Service Superintendent to develop and implement concessions management plans and commercial services plans covering, in whole or in part, the area managed by that Superintendent.

(f) SECRETARY DEFINED.—The term “Secretary” means the Secretary of the Interior and any person employed by the Secretary of the Interior in any capacity.

By Ms. MURKOWSKI:

S. 1364. A bill to amend the Alaska National Lands Conservation Act to authorize the payment of expenses after the death of certain Federal employees in the State of Alaska; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, on the morning following the annual candlelight vigil to honor fallen law enforcement officers, I came to the floor to speak about three brave Alaskans whose names were inscribed on the National Law Enforcement Officers’ Memorial at Judiciary Square this year. One of these brave Alaskans was a National Park Service ranger who lost his life when the aircraft he was piloting crashed in a remote part of Alaska. Today, I am introducing legislation which I hope will help the surviving family members of this ranger in their recovery from this tragic loss and provide authority for the Federal Government to help the surviving family members of other similarly situated Federal employees should a similar tragedy occur in the future.

This ranger I am speaking about was assigned to the Katmai National Park and Preserve in the Bristol Bay region of Alaska and lived in the community of Naknek. Naknek is not connected to the rest of North America by road. It is what we in Alaska call a “bush” community. But it was home to the ranger and became the adopted home of his widow who did not grow up in the area. The ranger about whom I am speaking was hired under a special hiring authority in the Alaska National Interest Lands Conservation Act, ANILCA, which authorizes the Federal land managers to extend a hiring preference to those with special knowledge about a Conservation System Unit. He was regarded as a “local hire.”

Under the Federal Travel Regulation, when a federal employee dies outside of the Continental United States, the Federal Government will reimburse the members of his or her household for the cost of relocating to their permanent residence. Alaska is regarded as “outside of the Continental United States” under this regulation.

Thus, if the National Park Service ranger who died in the line of duty came from the Lower 48 before being assigned to the Katmai National Park and Preserve then the Federal Government, as I read the regulation, could reimburse the surviving family members for the cost of relocating to Anchorage. This cost can be fairly substantial since one cannot hire a moving

van to ship the personal effects from South Naknek to Anchorage. There are no roads which connect the bush village of South Naknek to Anchorage. The personal effects need to be transported by air.

However, if the deceased employee is a local hire employee, the Federal Travel Regulation does not authorize the Federal Government to reimburse the surviving family members for their relocation cost because the deceased employee’s hometown is deemed to be the local hire location. This works an inequity where, as in the present case, the deceased employee’s surviving spouse does not have ties to the duty station community, but rather to another community in Alaska. In this instance, the surviving spouse desires to relocate to Anchorage, which is Alaska’s largest city, and continue to raise her three children there.

The legislation that I am introducing today is intended to cure this inequity. It would amend ANILCA, the same legislation which contains the local hire authority, to provide that if a local hire employee dies in the line of duty, the Federal Government will reimburse the surviving immediate family for the cost of transporting the remains to a location in Alaska of their choosing and will also relocate the immediate family members to a community in the State of Alaska which is selected by the surviving head of household. I think that this is the least we can do for the survivors of local hire employees who go to work everyday in the harsh climate and conditions of bush Alaska but sadly sometimes do not return home.

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

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

S. 1364

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

SECTION 1. PAYMENT OF EXPENSES AFTER THE DEATH OF CERTAIN FEDERAL EMPLOYEES IN THE STATE OF ALASKA.

Section 1308 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) PAYMENT OF EXPENSES AFTER DEATH OF AN EMPLOYEE.—

“(1) DEFINITION OF IMMEDIATE FAMILY MEMBER.—In this subsection, the term “immediate family member” means a person related to a deceased employee that was a member of the household of the deceased employee at the time of death.

“(2) PAYMENTS.—If an employee appointed under the program established by subsection (a) dies in the performance of any assigned duties on or after October 1, 2002, the Secretary may—

“(A) pay reasonable expenses for the preparation and transportation of the remains of the deceased employee to a location in the State of Alaska which is selected by the surviving head of household of the deceased employee;

“(B) pay reasonable expenses for transporting immediate family members and the baggage and household goods of the deceased employee and immediate family members to a community in the State of Alaska which is selected by the surviving head of household of the deceased employee.”.

By Mr. MCCONNELL (for himself, Mr. KYL, and Mr. LEAHY):

S. 1365. A bill to provide increased foreign assistance for Cambodia under certain circumstances, and for other purposes; to the Committee on Foreign Relations.

Mr. MCCONNELL. Mr. President, today, along with my colleagues Senators KYL and LEAHY, I offer the “Cambodia Democracy and Accountability Act of 2003”. This Act is particularly timely, given that national elections are scheduled in that country on July 27th.

Cambodia is on its third round of parliamentary elections since the 1991 Paris Peace Accords, with previous elections having been funded by the United Nations in 1993 and by the Cambodian governments in 1998. Despite the billions of dollars spent on elections in that country—over \$2 billion by the U.N. alone—there has yet to be a credible poll that accurately reflects the will of the Cambodian people.

My colleagues will remember that the U.N.-sponsored elections resulted in a large voter turnout—but also an unworkable power sharing deal brokered between the winning royalist FUNCINPEC party and the hard line Cambodian People’s Party, CPP, that quickly dissolved into open hostilities, including a bloody grenade attack against a peaceful, pro-democracy rally and a CPP sponsored coup d’etat in 1997.

The debilitating hangover from this coup—destroyed party offices, dead activists, and a palpable climate of fear and repression—undermined prospects for free and fair elections in 1998 even before the first ballots were cast.

Fatigued and frustrated, the international community found it expedient to endorse the flawed elections, even as students and Buddhist monks erected a “democracy square” in Phnom Penh to protest the polls. A CPP crackdown left many of these peaceful protesters killed, beaten or harassed.

It is time that Prime Minister Hun Sen—as the self-proclaimed strongman of Cambodia—is held accountable for the murder of political activists, Buddhist monks, civilians, and students. There is no rule of law, if the leaders of the government are not subject to it.

A second “coalition” government between royalists and hard liners was cobbled together in the aftermath of the 1998 elections. This time, there was no pretext of power sharing, and for the past 5 years CPP has been firmly and completely in control of the country.

Nevertheless, in the months and weeks before the upcoming July elections, the political marriage between FUNCINPEC and CPP is fraying. In an

effort to harass and intimidate his opponents, in late January Prime Minister Hun Sen whipped up nationalistic sentiment against Thailand, let loose the so-called Pagoda Boys, government-paid thugs, and destroyed \$50 million worth of Thai public and private interests in Phnom Penh.

Despite frantic pleas for assistance, the Thai ambassador and other diplomatic personnel escaped injury by scaling the embassy's walls and scurrying to safety. In the aftermath of the riots, Hun Sen arrested and intimidated students, independent broadcasters, and political activists. A senior opposition figure sought—and was granted—refuge in the U.S. Embassy.

In February, former royalist parliamentarian Om Radsady was gunned down in a mafia-style murder in Phnom Penh. Well liked and respected by his colleagues from all Cambodian political parties, Radsady's assassination sent a not so subtle message that no one is immune from the black hand of CPP.

It is time Hun Sen is held accountable for his complicity in actions that grossly violate international and domestic laws, and the human rights and dignity of the people of Cambodia.

The fundamental question facing the Cambodian people today is whether the July 27th elections will be a meaningful exercise in democracy, or another lost opportunity to chart a new course for that beleaguered country.

Last week, Prime Minister Hun Sen assured Secretary of State Colin Powell that Cambodia would hold free and fair elections. Secretary Powell should not be duped by these hollow promises. A preponderance of evidence suggests that CPP is actively trying to steal the elections before July 27th: political activists continue to be murdered and intimidated, creating a chilling tone of fear and repression; the CPP continues to directly influence and manipulate the election machinery, with members of the National Election Commission, NEC, nominated in a closed manner by the co-Ministers of Interior and the NEC already failing to investigate allegations of election improprieties; and, opposition political parties continue to lack access to media, with several broadcast outlets in Cambodia unwilling to sell air time to CPP's challengers.

Let me take a moment to describe what the Cambodian Democracy and Accountability Act does—and does not—do.

The Act provides additional foreign assistance to Cambodia—an increase by half (or \$21.5 million) over the fiscal year 2004 budget request of \$43 million—if new leadership has been elected in free and fair elections, and if Hun Sen is no longer Prime Minister. It has been apparent to me that Hun Sen has long been part of Cambodia's problems—and not part of the solution.

The Act does not preclude the Cambodian people from voting for the political party of their choice. Ballot se-

crecy must be ensured—as well as transparency in the process of vote counting and tabulation—in order that the will of the Cambodian people is accurately expressed. It is my fear that CPP pre-election chicanery may already have violated the integrity of the election process.

If I wanted to interfere with the elections I would have offered legislation that restricts all assistance to Cambodia unless a specific political party or parties was elected. This Act does not do this. It does not cut any assistance—not a single penny—to Cambodia included in the fiscal year 2004 budget request. It simply provides that if the major obstacle to democracy and development in the country—namely Prime Minister Hun Sen—is out of power, additional foreign aid will be forthcoming.

It is important to recall that Hun Sen's coup resulted in severe restrictions on assistance to Cambodia—that continue to this day. If given an opportunity through free and fair elections, the Cambodian people will make the right choices that will ensure a dawn for development in that country.

Why will they make the right choice? Over the many decades he has been in power, Hun Sen has ruled Cambodia through violence, fear and repression. Under his watch, the country has become a haven for sexual predators and pedophiles, the criminal underworld, and international terrorists. Hun Sen has repeatedly abused the most basic of freedoms protected by the Cambodian Constitution, attacked his political opposition, and perpetuated a climate of impunity that stifles the advancement of freedom and free markets.

And he has never—not once—been held accountable for his actions.

In addition to increasing foreign assistance under certain conditions, the Act restricts assistance to a Khmer Rouge tribunal unless the President determines that, among other things, the tribunal is supported by democratic Cambodian political parties and is not under the control or influence of the CPP. It also requires the Federal Bureau of Investigations to resume its investigation of the March 30, 1997 grenade attack against opposition leader Sam Rainsy that killed and injured scores of Cambodians.

I should remind my colleagues that American democracy worker Ron Abney was injured in this act of terrorism, reportedly carried out by the CPP. Ron—and all the victims of this attack—are still waiting for justice.

Secretary Powell wrote in a June 24 op-ed that Zimbabwean dictator Robert Mugabe's "time has come and gone." As democracy is similarly under siege in both Zimbabwe and Cambodia, dictator Hun Sen's time has also come and gone.

By Mr. ALLARD (for himself, Mr. FEINGOLD, and Mr. CRAPO):

S. 1366. A bill to authorize the Secretary of the Interior to make grants

to State and tribal governments to assist State and tribal efforts to manage and control the spread of chronic wasting disease in deer and elk herds, and for other purposes; to the Committee on Environment and Public Works.

Mr. ALLARD. 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. 1366

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 "Chronic Wasting Disease Financial Assistance Act of 2003".

SEC. 2. DEFINITION AND FINDINGS.

(a) CHRONIC WASTING DISEASE DEFINED.—In this Act, the term "chronic wasting disease" means the animal disease afflicting deer and elk that—

(1) is a transmissible disease of the nervous system resulting in distinctive lesions in the brain; and

(2) belongs to the group of diseases known as transmissible spongiform encephalopathies, which group includes scrapie, bovine spongiform encephalopathy, and Cruetzfeldt-Jakob disease.

(b) FINDINGS.—Congress finds the following:

(1) The States retain undisputed primacy and policy-making authority with regard to wildlife management, and nothing in this Act interferes with or otherwise affects the primacy of the States in managing wildlife generally, or managing, surveying, and monitoring the incidence of chronic wasting disease in animal populations.

(2) Chronic wasting disease is a fundamental threat to the health and vibrancy of deer and elk populations, and the increased occurrence of chronic wasting disease in the United States necessitates government action to manage and eradicate this lethal disease.

(3) As the States and tribal government move to manage existing incidence of chronic wasting disease and insulate non-infected wild cervid populations from the disease, it is appropriate for the Federal Government to support their efforts with financial assistance.

SEC. 3. STATE CHRONIC WASTING DISEASE MANAGEMENT CAPACITY BUILDING GRANTS.

(a) GRANTS AUTHORIZED.—The Secretary of the Interior shall make grants to State wildlife management agencies to assist States in developing and implementing long term management strategies to address chronic wasting disease in wild cervids.

(b) ELIGIBILITY.—A wildlife management agency of a State whose comprehensive wildlife conservation plan include chronic wasting disease management activities is eligible for a grant under this section.

(c) FUNDING PRIORITIES.—In determining the amount of grant funds to be provided to eligible applicants under this section, the Secretary shall prioritize applicants based on the following criteria:

(1) States in which chronic wasting disease has been detected and States located adjacent or in proximity to States in which chronic wasting disease has been detected.

(2) States that have expended State funds for chronic wasting disease management, monitoring, surveillance, and research, with additional priority given to those States

that have shown the greatest financial commitment to managing, monitoring, surveying, and researching chronic wasting disease.

(3) States with comprehensive and integrated policies and programs focused on chronic wasting disease management between involved State wildlife and agricultural agencies and tribal governments, with additional priority given to States that have integrated the programs and policies of all involved agencies related to chronic wasting disease management.

(4) States that are seeking to develop a rapid response capacity to address outbreaks of chronic wasting disease, whether occurring in States in which chronic wasting disease is already found or States with first infections, for the purpose of containing the disease in any new area of infection.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$7,500,000 to carry out this section.

SEC. 4. GRANTS FOR STATES WITH CHRONIC WASTING DISEASE OUTBREAKS.

(a) **GRANTS AUTHORIZED.**—The Secretary of the Interior shall make grants to State wildlife management agencies to assist States in responding to chronic wasting disease outbreaks in wild cervids.

(b) **ELIGIBILITY.**—A wildlife management agency of a State whose comprehensive wildlife conservation plan include chronic wasting disease management activities is eligible for a grant under this section.

(c) **FUNDING PRIORITIES.**—In determining the amount of grant funds to be provided to eligible applicants under this section, the Secretary shall prioritize applicants based on the following criteria:

(1) State expenditures on chronic wasting disease management, monitoring, surveillance, and research in response to management of an on-going outbreak.

(2) The number of chronic wasting disease cases detected in the State.

(3) The wild cervid population of the State.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$10,000,000 to carry out this section.

SEC. 5. TRIBAL CHRONIC WASTING DISEASE MANAGEMENT GRANTS.

(a) **GRANTS AUTHORIZED.**—The Secretary of the Interior shall make grants to tribal wildlife management agencies to assist Indian tribes in developing and implementing long term management strategies to address chronic wasting disease in wild cervids.

(b) **ELIGIBILITY.**—A wildlife management agency of an Indian tribe whose comprehensive wildlife conservation plan include chronic wasting disease management activities is eligible for a grant under this section.

(c) **FUNDING PRIORITIES.**—In determining the amount of grant funds to be provided to eligible applicants under this section, the Secretary shall prioritize applicants based on the following criteria:

(1) Tribal governments managing lands on which cervids with chronic wasting disease have been detected, or managing lands located adjacent or in proximity to lands on which cervids with chronic wasting disease have been detected.

(2) Tribal governments that have expended tribal funds for chronic wasting disease management, monitoring, surveillance, and research, with additional priority given to tribal governments that have shown the greatest financial commitment to managing, monitoring, and surveying chronic wasting disease.

(3) Tribal governments with cooperative arrangements with Federal and State wildlife and agricultural agencies and State governments, with additional priority given to tribal governments that are working with

other involved agencies on issues of chronic wasting disease management.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$3,000,000 to carry out this section.

SEC. 6. ADMINISTRATION.

The Secretary of the Interior shall carry out this Act acting through the Director, United States Fish and Wildlife Service. Funds appropriated to carry out this Act shall be administered through the Federal Assistance Program in the United States Fish and Wildlife Service. Not more than three percent of such funds may be expended for administrative expenses of the United States Fish and Wildlife Service to carry out this Act.

Mr. FEINGOLD. Mr. President, I am pleased to join with my colleague from Colorado, Mr. ALLARD, as a cosponsor of the Chronic Wasting Disease Financial Assistance Act of 2003. This legislation is similar to legislation, S. 1036, the Chronic Wasting Disease Support Act of 2003, that we introduced earlier this year.

The House Resources Committee held a hearing on June 19, 2003 on the issue of chronic wasting disease, or CWD. At that hearing, state agency representatives argued strongly that Congress should create a new grant program to provide assistance to states for the management of CWD. They also expressed an interest in having those funds distributed using an existing distribution mechanism. This legislation responds directly to these comments. In total, the bill directs the U.S. Fish and Wildlife Service to provide \$20.5 million in Federal grants to State and tribal governments for CWD management in wild deer and elk, \$10.5 million more in resources than were included in the bill Senator ALLARD and I introduced earlier this year.

The bill creates three new Federal CWD grant programs. The first program is a new nationwide CWD capacity grant, authorized at a total of \$7.5 million. This program would provide grants to States so that they can fund CWD management programs. Preference would be given to States with comprehensive and integrated chronic wasting disease management programs involving all relevant state agencies.

The second grant program would provide additional \$10 million in grant assistance to states like Colorado and Wisconsin that already have detected chronic wasting disease in their wild deer and elk. These States need additional help. Wisconsin has undertaken significant measures to combat CWD at significant expense, and this program acknowledges that outbreaks are expensive to manage and require Federal financial assistance.

Finally, the bill would create a third \$3 million grant program to provide CWD management grants directly to tribal governments. To be eligible for these programs, States and tribes are given the ability under the bill to use an existing mechanism, the U.S. Fish and Wildlife Service Federal Assistance Act procedures to expedite the receipt of grant funds.

This bill is needed because State wildlife departments and tribal govern-

ments do not have the financial resources to adequately confront the problem. Their resources are spread too thin as they attempt to prevent the disease from spreading. Federal help in the form of management funding is urgently needed. Federal funding will help States and tribes to protect and safeguard our valued wild deer and elk from this disease.

I look forward to working with the Senate to secure passage of this measure. This is a good bill, and it deserves the Senate's support.

By Mr. McCONNELL (for himself,

Mr. BAYH, and Mr. FITZGERALD):

S. 1367. A bill to amend the Richard B. Russell National School Act to establish programs to promote increased consumption of milk in schools and to improve the nutrition and health of children; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. McCONNELL. Mr. President, I rise today to introduce a very important piece of legislation that could provide great benefits for the health of our young people while simultaneously strengthening the future viability of dairy producers throughout the United States.

My bill, the Child Nutrition Improvement Act of 2003, would provide incentives for schools to encourage the consumption of milk as part of the school lunch program and supply needed flexibility for schools to offer a wide variety of milk products and flavors.

There is no doubt that the eating habits we develop when we are young affect our habits and nutritional choices for the rest of our lives. The school lunch program has provided a key tool in promoting healthy eating habits among young people, which have both health and educational benefits.

Milk has been a critical component of the school lunch program because it is the principal source of calcium and a leading source of several other important nutrients in our diet. That was true when the federal program began in 1946 and it is still true today.

With 9 out of 10 teenage girls and 7 out of 10 teenage boys currently not getting enough calcium, milk's important is perhaps greater today than ever before. Serving milk with the school lunch is a critical step in addressing the calcium crisis. Federal child health experts who are on the frontlines fighting the calcium crisis recognize milk's central role in addressing the problem. Study after study, emphasize the need for growing children and teens to consume more milk for healthy bones, and the American Academy of Pediatrics has urged its members to recommend their patients get enough milk, cheese, yogurt and other calcium rich foods to help build bone mass.

As a result of these recommendations, we have seen a push for more milk in more places in school, like vending machines and school stores. There's a real concern about nutritious choices for school children, and many

local school districts and state legislatures are pushing to add more healthful beverage choices like milk.

A large school vending test in 2001 demonstrated that kids will eagerly buy milk from vending machines in schools when it is offered. The test was heralded by school nutritionists and helped stimulate nationwide interest in getting milk vending machines into more schools.

A pilot test conducted in 146 schools with 100,000 students showed dramatic increases in milk consumption—15 percent in elementary schools and 22 percent in secondary schools—when simple improvements were made in the way milk was packaged and presented to students. The milk was served colder and kids loved the addition of a third flavor, it was usually strawberry. No only did kids drink more milk, more kids ate in the cafeteria. That meant they not only got milk, they also got improved nutrition through greater intake of vegetables, fruits and other nutritionally important foods.

Milk has an unsurpassed nutrient package for young children and teens. Milk has nine essential vitamins and minerals, including calcium, vitamins A, D and B12, protein, potassium, riboflavin, niacin and phosphorus. These nutrients are critical to good health and the prevention of chronic disease. In addition, it is the primary way that growing children get the calcium they need. In fact, according to the U.S. Department of Agriculture about 75 percent of the calcium in our food supply comes from milk and foods made with milk. By about age 20, the average young person has acquired about 98 percent of his or her skeletal mass. Building strong bones during childhood and adolescence is one of the best defenses against developing osteoporosis later in life.

In addition to the bone-building benefits of milk, research indicates that a diet rich in low-fat milk may help reduce the risk of high blood pressure and heart disease and help prevent breast cancer, colon cancer and even help in the fight against obesity.

Milk's role in a nutritious diet has long been noted by the nutrition and science community, including the American Academy of Pediatrics, the American Dietetic Association, the National Institute of Child Health and Human Development, the National Osteoporosis Foundation, the U.S. Department of Agriculture, and many other reputable health organizations.

As I have already mentioned, government statistics indicate that we have a calcium crisis among our children and youth. Nearly 90 percent of teenage girls and almost 70 percent of teenage boys fail to get enough calcium in their diets. During the teen years nearly half of all bone is formed and about 15 percent of your adult height is added. As a national health priority, for proper growth and development, we need to be doing all we can to encourage our children and youth to drink milk, and that

is the goal of the legislation I am introducing today.

I ask my colleagues for your support of this important piece of legislation.

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. 1367

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Nutrition Improvement Act of 2003".

SEC. 2. CONSUMPTION OF MILK IN SCHOOLS.

(a) FLUID MILK.—

(1) IN GENERAL.—Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by striking paragraph (2) and inserting the following:

"(2) FLUID MILK.—

"(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

"(i) shall offer students fluid milk; and

"(ii) shall offer students a variety of flavored and unflavored milk, as determined by the school.

"(B) FLUID MILK PRODUCTS.—A school or institution that participates in the school lunch program under this Act—

"(i) may offer a la carte fluid milk products to be sold in addition to and, at the option of the school, adjacent to fluid milk offered as part of a reimbursable meal; and

"(ii) shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

"(I) on the school premises; or

"(II) at any school-sponsored event."

(2) APPLICATION.—The amendment made by paragraph (1) applies to an agreement or contract entered into on or after the date of enactment of this Act.

(b) INCREASED CONSUMPTION OF MILK IN SCHOOLS.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following:

"(q) INCREASED CONSUMPTION OF MILK IN SCHOOLS.—

"(1) IN GENERAL.—To encourage healthier nutritional environments in schools and institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), the Secretary shall establish a program under which any such school or institution may (in accordance with paragraph (3)) receive an increase in the reimbursement rate for free and reduced price meals otherwise payable under this Act and the Child Nutrition Act of 1966, if the school or institution implements a plan for improving the nutritional value of meals consumed in the school or institution by increasing the consumption of fluid milk in the school, as approved by the Secretary in accordance with criteria established by the Secretary.

"(2) PLANS.—

"(A) IN GENERAL.—For purposes of the program established under paragraph (1), the Secretary shall establish criteria for the approval of plans of schools and institutions for increasing consumption of fluid milk.

"(B) CRITERIA.—An approved plan may—

"(i) establish targeted goals for increasing fluid milk consumption throughout the school or institution or at school or institution activities;

"(ii) improve the accessibility, presentation, positioning, or promotion of fluid milk throughout the school or institution or at school or institution activities;

"(iii) improve the ability of a school or institution to tailor the plan to the customs and demographic characteristics of—

"(I) the population of the school or institution; and

"(II) the area in which the school or institution is located; and

"(iv) provide—

"(I) packaging, flavor variety, merchandising, refrigeration, and handling requirements that promote the consumption of fluid milk; and

"(II) increased standard serving sizes for fluid milk consumed in middle and high schools.

"(C) ADMINISTRATION.—In establishing criteria for plans under this subsection, the Secretary shall—

"(i) take into account relevant research; and

"(ii) consult with school food service professionals, nutrition professionals, food processors, agricultural producers, and other groups, as appropriate.

"(3) REIMBURSEMENT RATES AND INCENTIVES.—

"(A) IN GENERAL.—For purposes of administering the program established under paragraph (1), the Secretary shall annually provide reimbursement rates and incentives for free and reduced price meals otherwise payable under this Act and the Child Nutrition Act of 1966 of not less than 2 cents and not more than 10 cents per meal, to reflect the additional costs incurred by schools and institutions in increasing the consumption of fluid milk under the program.

"(B) CRITERIA.—The Secretary may vary the increase in reimbursement rates and incentives for free and reduced price meals based on the degree to which the school or institution adopts the criteria established by the Secretary under paragraph (2)."

SEC. 4. IMPROVED NUTRITION AND PHYSICAL ACTIVITY LEVEL OF CHILDREN.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 2(b)) is amended by adding at the end the following:

"(r) IMPROVED NUTRITION AND PHYSICAL ACTIVITY LEVEL OF CHILDREN.—

"(1) DEFINITION OF HEALTHY SCHOOL ENVIRONMENT PROGRAM.—In this subsection, the term 'healthy school environment program' means a program that—

"(A) is designed to improve the environment of a school with respect to the nutrition and physical activity level of children enrolled in the school; and

"(B) includes steps to improve and make available healthy food choices (including fruits, vegetables, and dairy products).

"(2) PROGRAM.—The Secretary shall carry out a program to provide grants to schools that implement healthy school environment programs.

"(3) ADMINISTRATION.—In carrying out the program, the Secretary may enter into cooperative agreements with—

"(A) nonprofit organizations;

"(B) educational and scientific institutions;

"(C) Federal, State, and local agencies; and

"(D) other entities that contribute funds or in-kind services for the program.

"(4) ACCEPTANCE OF FUNDS.—Notwithstanding any other provision of law, the Secretary may accept funds from an entity referred to in paragraph (3) solely for use in carrying out the program under this subsection."